

Table of Contents

Volume 11

CHAPTER 1. AN OVERVIEW OF THE DIVORCE PROCESS: DIVORCE AND SEPARATION

§ 1:1	Historical background
§ 1:2	Preliminary considerations—Required residence of the parties
§ 1:3	Preliminary considerations—Subject-matter jurisdiction
§ 1:4	Preliminary considerations—Jurisdiction over the parties and over the marriage
§ 1:5	Preliminary considerations—Limitations on actions for divorce and separation
§ 1:6	Preliminary considerations—Particularity of allegations in complaint
§ 1:7	Preliminary considerations—Commencement of the action; notice
§ 1:8	Preliminary considerations—Venue
§ 1:9	Preliminary considerations—Court records; court calendar
§ 1:10	Preliminary considerations—Removal of barriers to remarriage
§ 1:11	Preliminary considerations—Rules of conduct for attorneys in matrimonial matters
§ 1:12	Grounds for divorce
§ 1:13	Grounds for divorce—Cruel and inhuman treatment
§ 1:14	Grounds for divorce—Abandonment
§ 1:15	Grounds for divorce—Imprisonment
§ 1:16	Grounds for divorce—Adultery
§ 1:17	Grounds for divorce—Living apart pursuant to separation decree
§ 1:18	Grounds for divorce—Living apart pursuant to separation agreement
§ 1:18.50	Grounds for divorce—Irretrievable breakdown

NEW YORK LAW OF DOMESTIC RELATIONS

- § 1:19 Grounds for judicial separation—Legal separation versus divorce
- § 1:20 Grounds for judicial separation—Cruel and inhuman treatment
- § 1:21 Grounds for judicial separation—Abandonment
- § 1:22 Grounds for judicial separation—Neglect or nonsupport
- § 1:23 Grounds for judicial separation—Adultery
- § 1:24 Grounds for judicial separation—Imprisonment
- § 1:25 Defenses
- § 1:26 Defenses—Cruel and inhuman treatment
- § 1:27 Defenses—Abandonment
- § 1:28 Defenses—Imprisonment
- § 1:29 Defenses—Adultery
- § 1:30 Defenses—Living apart pursuant to separation decree
- § 1:31 Defenses—Living apart pursuant to separation agreement
- § 1:32 Defenses—Neglect or nonsupport
- § 1:33 Death of party
- § 1:34 Incompetent party
- § 1:35 Spousal maintenance and distribution of property
- § 1:36 Child custody and child support

CHAPTER 2. THE LEGAL RIGHTS OF MARRIED PERSONS

- § 2:1 Marital rights in general
- § 2:2 Husband's interest in property of wife
- § 2:3 Wife's interest in property of husband
- § 2:4 Actions and proceedings in general
- § 2:5 Contract rights
- § 2:6 Joint accounts
- § 2:7 Tenancy by the entirety
- § 2:8 Tenancy by the entirety—Effect of divorce
- § 2:9 Tenancy by the entirety—Effect of judicial separation
- § 2:10 Tenancy by the entirety—Impact on creditors
- § 2:11 Tenancy by the entirety—Conveyance or mortgage
- § 2:12 Partition of marital realty
- § 2:13 Partition of marital realty—Title considerations

TABLE OF CONTENTS

§ 2:14	Constructive trust actions
§ 2:15	Constructive trust actions—Impact of equitable distribution law
§ 2:16	Insurance benefits
§ 2:17	Income tax liabilities and refunds
§ 2:18	Survivorship rights of spouses
§ 2:19	Liability for family debts
§ 2:20	Liability for necessities
§ 2:21	Liability for necessities—What constitutes “necessaries”?
§ 2:22	Liability for necessities—Termination of obligation for necessities
§ 2:23	Liability for necessities—Impact of equitable distribution
§ 2:24	Liability for family torts
§ 2:25	Loss of consortium and services
§ 2:26	Names in the family
§ 2:27	Practice checklist

CHAPTER 3. RIGHTS OF DOMESTIC PARTNERS

§ 3:1	Introduction
§ 3:2	Rights of cohabitants—Generally
§ 3:3	Rent regulated housing—Background
§ 3:4	Familial rights of domestic partners under the rent regulations
§ 3:5	Relationships satisfying the definition
§ 3:6	Circumstances excluding the occupant from the definition
§ 3:7	Child custody, visitation, and support
§ 3:8	Adoption
§ 3:9	Decedents
§ 3:10	Family offenses
§ 3:11	Practice checklist

CHAPTER 4. COURTSHIP

§ 4:1	Legal consequences
§ 4:2	Abolished actions
§ 4:3	Preserved courtship causes of action
§ 4:4	Engagement rings
§ 4:5	Preserved actions—Equitable distribution impact
§ 4:6	Practice checklist

CHAPTER 5. MARRIAGE

- § 5:1 Introduction
- § 5:2 Creation of ceremonial marriage—Statutory compliance essential
- § 5:3 Creation of ceremonial marriage—Procedural requirements
- § 5:4 Capacity to marry—Legal age
- § 5:5 Capacity to marry—Physical capacity
- § 5:6 Capacity to marry—Same sex
- § 5:7 Capacity to marry—Mental capacity
- § 5:8 Capacity to marry—Prior undissolved marriage
- § 5:9 Capacity to marry—Relationship of the parties
- § 5:10 Capacity to marry—Consent of the parties
- § 5:11 Capacity to marry—Proxy marriages
- § 5:12 Common-law marriage—Definition and validity
- § 5:13 Common-law marriage—Reputation
- § 5:14 Common-law marriage—Termination
- § 5:15 Proof of marriage
- § 5:16 Termination of marriage
- § 5:17 Practice checklist

CHAPTER 6. ANTENUPTIAL AGREEMENTS

- § 6:1 Generally; statutory authority
- § 6:2 Formalities of the agreement
- § 6:3 Formalities of the agreement—Retroactivity of agreements executed after the Equitable Distribution Law (July 19, 1980)
- § 6:4 Formalities of the agreement—Oral agreements
- § 6:5 Formalities of the agreement—Impact of a void marriage; consideration
- § 6:6 Formalities of the agreement—Rights and obligations, consideration and void agreements under equitable distribution
- § 6:7 Presumption of legality
- § 6:8 Rescission; statute of limitations
- § 6:9 Scope of the agreement; gender-neutral support provisions
- § 6:10 Disclosure
- § 6:11 Testamentary dispositions in the agreement
- § 6:12 Waiver of right of election; qualified retirement plans

TABLE OF CONTENTS

§ 6:13	Waiver of survivor benefits from qualified retirement plans
§ 6:14	Waiver against testamentary substitutes
§ 6:15	Distribution of separate and marital property
§ 6:16	Maintenance of the spouse
§ 6:17	Maintenance of the spouse—General Obligations Law § 5-311; limitations on the antenuptial agreement
§ 6:18	Maintenance of the spouse—“Fair and reasonable”; limitations on the antenuptial agreement
§ 6:19	Provisions for custody, care, and education of children
§ 6:20	Provisions for custody, care, and education of children—Child support
§ 6:21	Effect upon subsequent matrimonial actions
§ 6:22	Distinction between antenuptial and separation agreements
§ 6:23	Distinction between antenuptial and separation agreements—Modification of orders and judgments in matrimonial actions
§ 6:24	Religious agreements
§ 6:25	Foreign agreements
§ 6:26	Practice checklist

CHAPTER 7. SEPARATION AGREEMENTS

§ 7:1	Introduction
§ 7:2	Statutory authority
§ 7:3	Elements of an agreement
§ 7:4	Legal effect of a separation agreement—In general
§ 7:5	Legal effect of a separation agreement—Bar to an action for separation decree
§ 7:6	Legal effect of a separation agreement—Not a bar to an action for divorce
§ 7:7	Legal effect of a separation agreement—Effect of agreement deficient as to spousal maintenance
§ 7:8	Legal effect of a separation agreement—Effect of agreement deficient as to child support
§ 7:9	Separation agreements and estates
§ 7:10	Incorporation or merger
§ 7:11	Revocation

NEW YORK LAW OF DOMESTIC RELATIONS

- § 7:12 Modification
- § 7:13 Enforcement
- § 7:14 In-court agreements
- § 7:15 Interpretation of separation agreements
- § 7:16 Action to set aside separation or antenuptial agreement
- § 7:17 Practice checklist

CHAPTER 8. DIVORCE JURISDICTION IN NEW YORK

- § 8:1 Overview
- § 8:2 Constitutional principles
- § 8:3 Full faith and credit
- § 8:4 Domicile
- § 8:5 Domicile and durational residency statutes
- § 8:6 Due process
- § 8:7 Divisible divorce
- § 8:8 Constitutional requirements of jurisdiction to determine child custody
- § 8:9 Federal jurisdiction
- § 8:10 Trial court jurisdiction in New York
- § 8:11 Venue
- § 8:12 Divorce actions initiated in New York
- § 8:13 Divorce actions initiated in New York—Summons with notice
- § 8:14 Divorce actions initiated in New York—Service of summons
- § 8:15 Divorce actions initiated in New York—Alternative methods of service within the State of New York
- § 8:16 Divorce actions initiated in New York—Service outside the State of New York
- § 8:17 Divorce actions initiated in New York—Proof of service
- § 8:18 New York residency requirements
- § 8:19 Jurisdiction over the defendant
- § 8:20 Jurisdiction over the defendant—Long-arm jurisdiction
- § 8:21 Foreign ex parte divorce decrees
- § 8:22 Injunctions restraining foreign ex parte divorce proceedings
- § 8:23 Jurisdiction over the incidents of divorce
- § 8:24 Jurisdiction over child custody in New York

TABLE OF CONTENTS

- § 8:25 Foreign bilateral divorce decrees
- § 8:26 Estoppel against jurisdictional attacks
- § 8:27 Divorce decrees of foreign nations: the principle of comity
- § 8:28 Practice checklist

CHAPTER 9. ANNULMENT

- § 9:1 Overview
- § 9:2 General requirements for annulments
- § 9:3 Void marriages
- § 9:4 Void marriages—Incestuous marriages
- § 9:5 Void marriages—Bigamous marriages
- § 9:6 Void marriages—Marriages solemnized by improper officials
- § 9:7 Voidable marriages
- § 9:8 Voidable marriages—Parties under age of 18
- § 9:9 Voidable marriages—Want of understanding
- § 9:10 Voidable marriages—Physical incapacity
- § 9:11 Voidable marriages—Force, duress, or fraud
- § 9:12 Voidable marriages—Incurable mental illness for five years
- § 9:13 Voidable marriages—Missing spouse; “Enoch Arden”
- § 9:14 Practice checklist

CHAPTER 10. DIVORCE

- § 10:1 Generally
- § 10:2 Cruel and inhuman treatment—Background and general considerations
- § 10:3 Cruel and inhuman treatment—Misconduct constituting actionable cruelty
- § 10:4 Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Verbal abuse and torment
- § 10:5 Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Physical abuse
- § 10:6 Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Threats of violence
- § 10:7 Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Intoxication and drug abuse

NEW YORK LAW OF DOMESTIC RELATIONS

§ 10:8	Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Refusal to engage in sexual relations
§ 10:9	Cruel and inhuman treatment—Misconduct constituting actionable cruelty—Adulterous behavior
§ 10:10	Cruel and inhuman treatment—Misconduct constituting actionable cruelty—False charges of infidelity
§ 10:11	Cruel and inhuman treatment—Pleadings and proof—CPLR 3016(c) requirements
§ 10:12	Cruel and inhuman treatment—Pleadings and proof—Spousal testimony
§ 10:13	Cruel and inhuman treatment—Pleadings and proof—Corroboration
§ 10:14	Cruel and inhuman treatment—Pleadings and proof—Medical evidence
§ 10:15	Cruel and inhuman treatment—Defenses
§ 10:16	Cruel and inhuman treatment—Effect of plaintiff’s misconduct
§ 10:17	Abandonment—Definitions; statutory provisions; statute of limitations
§ 10:18	Abandonment—Divorce actions; nature of the one-year time requirement
§ 10:19	Abandonment—Types—General
§ 10:20	Abandonment—Types—Actual physical departure
§ 10:21	Abandonment—Types—Refusal by spouse to relocate
§ 10:22	Abandonment—Types—Unjustifiable exclusion from marital residence
§ 10:23	Abandonment—Types—Constructive abandonment
§ 10:24	Abandonment—Abandoning spouse’s “good faith offer to return”—Introduction
§ 10:25	Abandonment—Abandoning spouse’s “good faith offer to return”—Separation actions
§ 10:26	Abandonment—Abandoning spouse’s “good faith offer to return”—Divorce actions
§ 10:27	Abandonment—Plaintiff’s misconduct; Domestic Relations Law § 202; separation actions
§ 10:28	Abandonment—Defenses to a divorce action
§ 10:29	Imprisonment

TABLE OF CONTENTS

§ 10:30	Adultery—Definitions; statutory provisions
§ 10:31	Adultery—A crime in New York state
§ 10:32	Adultery—Marital fault; effect upon law of equitable distribution
§ 10:33	Adultery—Proof—Circumstantial evidence
§ 10:34	Adultery—Proof—Direct evidence
§ 10:35	Adultery—Proof—Admissions
§ 10:36	Adultery—Proof—Burden of proof; quality of evidence
§ 10:37	Adultery—Proof—Commencing an action; “cruel and inhuman treatment” rather than “adultery” as a cause of action
§ 10:38	Adultery—Proof—Spousal testimony
§ 10:39	Adultery—Proof—Testimony by one spouse for or against the other spouse
§ 10:40	Adultery—Proof—Inference of guilt; failure to testify
§ 10:41	Adultery—Proof—Admissibility of testimony on nonadultery issues notwithstanding incompetence on issue of adultery
§ 10:42	Adultery—Statutory defenses—In general
§ 10:43	Adultery—Statutory defenses—Procurement and connivance
§ 10:44	Adultery—Condonation—In general
§ 10:45	Adultery—Condonation—Establishing condonation
§ 10:46	Adultery—Condonation—A single act of intercourse may not be condonation
§ 10:47	Adultery—Statute of limitations—In general
§ 10:48	Adultery—Statute of limitations—Section 171(3) is a statute of limitations, not a condition precedent
§ 10:49	Adultery—Statute of limitations—Begins to run from date of discovery
§ 10:50	Adultery—Statute of limitations—An affirmative defense
§ 10:51	Adultery—Recrimination
§ 10:52	Adultery—Recrimination—Affirmative defense; burden of proof
§ 10:53	Adultery—Recrimination—Evidentiary considerations
§ 10:54	Living apart pursuant to separation judgment or decree—Introduction
§ 10:55	Living apart pursuant to separation

NEW YORK LAW OF DOMESTIC RELATIONS

	judgment or decree—General considerations
§ 10:56	Living apart pursuant to separation judgment or decree—For one or more years
§ 10:57	Living apart pursuant to separation judgment or decree—Requirement of separation decree or judgment
§ 10:58	Living apart pursuant to separation judgment or decree—Foreign decree
§ 10:59	Living apart pursuant to separation judgment or decree—Substantial compliance
§ 10:60	Living apart pursuant to separation judgment or decree—Defenses
§ 10:61	Living apart pursuant to separation agreement—General considerations
§ 10:62	Living apart pursuant to separation agreement—Formal requirements of agreement—In general
§ 10:63	Living apart pursuant to separation agreement—Formal requirements of agreement—Due execution
§ 10:64	Living apart pursuant to separation agreement—Formal requirements of agreement—Filing
§ 10:65	Living apart pursuant to separation agreement—Living apart for one or more years
§ 10:66	Living apart pursuant to separation agreement—Substantial compliance
§ 10:67	Living apart pursuant to separation agreement—Defenses
§ 10:68	Living apart pursuant to separation agreement—Defenses—Invalidity of underlying agreement
§ 10:69	Living apart pursuant to separation agreement—Defenses—Reconciliation and abandonment of agreement
§ 10:69.50	Irretrievable breakdown
§ 10:70	Waiver of divorce claim by resumption of cohabitation
§ 10:71	Pleadings—Verification
§ 10:72	Pleadings—Supplementation
§ 10:73	Jury trial
§ 10:74	Default judgments
§ 10:75	Vacating default judgments

TABLE OF CONTENTS

§ 10:76 Practice checklist

CHAPTER 11. SEPARATION

- § 11:1 Introduction
- § 11:2 Grounds
- § 11:3 Distinctions between divorce and separation actions
- § 11:4 Separation judgment as a basis for conversion divorce
- § 11:5 Separation action based upon nonsupport
- § 11:6 Separation action based upon abandonment
- § 11:7 Practice checklist

CHAPTER 12. DISCLOSURE

- § 12:1 Introduction—Nature and purpose of disclosure
- § 12:2 Introduction—Merits disclosure
- § 12:3 Methods of obtaining disclosure—Priority of methods
- § 12:4 Methods of obtaining discovery—Time to conduct discovery
- § 12:5 Scope of disclosure
- § 12:6 Scope of disclosure—Who must make disclosure
- § 12:7 Scope of disclosure—Separate property
- § 12:8 Scope of disclosure—Business records
- § 12:9 Scope of disclosure—Reports of experts
- § 12:10 Scope of disclosure—Privileged matter; attorney's work product
- § 12:11 Scope of disclosure—Materials prepared for litigation
- § 12:12 Scope of disclosure—Party's statement; audiovisual materials
- § 12:13 Scope of disclosure—Effect of separation agreement
- § 12:14 Scope of disclosure—Supplementing prior responses
- § 12:15 Compulsory financial disclosure
- § 12:16 Compulsory financial disclosure—Contents of net-worth statement
- § 12:17 Compulsory financial disclosure—Materials to accompany net-worth statement
- § 12:18 Compulsory financial disclosure—When net-worth statement required
- § 12:19 Compulsory financial disclosure—Statement of

NEW YORK LAW OF DOMESTIC RELATIONS

- proposed disposition
- § 12:20 Depositions—In general
- § 12:21 Depositions—Priority of depositions
- § 12:22 Depositions—Deposition of nonparty
- § 12:23 Depositions—Depositions upon oral questions
- § 12:24 Depositions—Depositions upon written questions
- § 12:25 Depositions—Where deposition taken within
New York
- § 12:26 Depositions—Production of things at
examination
- § 12:27 Depositions—Conduct of the examination—
Persons before whom depositions may be taken
- § 12:28 Depositions—Conduct of the examination—
Oaths and testimony
- § 12:29 Depositions—Conduct of the examination—
Examination and cross-examination
- § 12:30 Depositions—Objections; waiver
- § 12:31 Depositions—Signing and physical preparation
of depositions; copies
- § 12:32 Depositions—Use of depositions
- § 12:33 Interrogatories—Parties
- § 12:34 Interrogatories—Interrogatories of nonparties in
matrimonial litigation
- § 12:35 Interrogatories—Scope
- § 12:36 Interrogatories—Service of interrogatories,
answers, or objections
- § 12:37 Discovery and production of documents
- § 12:38 Physical or mental examination
- § 12:39 Request for admission
- § 12:40 Protective orders and objections to discovery—
Protective orders
- § 12:41 Protective orders and objections to discovery—
Objections
- § 12:42 Supervision of disclosure
- § 12:43 Compelling disclosure
- § 12:44 Penalties and sanctions for nondisclosure
- § 12:45 Practice checklist

CHAPTER 13. INCIDENTAL PRACTICE

- § 13:1 Interim restraining orders
- § 13:2 Notice requirements
- § 13:3 Violation of restraining orders
- § 13:4 Turn-over orders

TABLE OF CONTENTS

§ 13:5	Rights of third parties
§ 13:6	Limits on pretrial sales
§ 13:7	Notices of pendency
§ 13:8	Receivership
§ 13:9	The filing of the RJI
§ 13:10	The preliminary conference
§ 13:11	Signature of papers by counsel
§ 13:12	The compliance conference
§ 13:13	Practice checklist

CHAPTER 14. EQUITABLE DISTRIBUTION OF PROPERTY

§ 14:1	Introduction
§ 14:2	The equitable distribution effective date
§ 14:3	The retroactive effect on pre-1980 property
§ 14:4	Actions subject to the equitable distribution law
§ 14:5	Actions subject to the equitable distribution law—Actions to declare validity of foreign divorces
§ 14:6	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce
§ 14:7	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Background
§ 14:8	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—The statutory action
§ 14:9	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Collateral estoppel concerns
§ 14:10	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Maintenance
§ 14:11	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—The requirement of a foreign judgment of divorce
§ 14:12	Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Cut-off dates and limitations

NEW YORK LAW OF DOMESTIC RELATIONS

- § 14:13 Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Death following foreign divorce
- § 14:14 Actions subject to the equitable distribution law—Actions for equitable distribution after valid foreign divorce—Statute of limitations
- § 14:15 Marital property—Generally
- § 14:16 Marital property—The cut-off dates
- § 14:17 Marital property—The cut-off dates—Commencement of matrimonial action
- § 14:18 Marital property—The cut-off dates—Matrimonial actions for cut-off date purposes
- § 14:19 Marital property—The cut-off dates—Separation agreements and cut-off date
- § 14:20 Marital property—The cut-off dates—Physical separation
- § 14:21 Post-commencement property
- § 14:22 Post-commencement dispositions
- § 14:23 Professional practices
- § 14:24 Enhanced earnings capacity
- § 14:25 Enhanced earnings capacity—Licenses
- § 14:26 Enhanced earnings capacity—Degrees
- § 14:27 Enhanced earnings capacity—The key of valuation
- § 14:28 Enhanced earnings capacity—The marital component
- § 14:29 Enhanced earnings capacity—Uncompleted studies
- § 14:30 Enhanced earnings capacity—Non-licensed or schooled careers
- § 14:31 Enhanced earnings capacity—Unused licenses or degrees
- § 14:32 Special license valuation issues
- § 14:33 Special license valuation issues—Use of actual earnings
- § 14:34 Special license valuation issues—*McSparron* and the Death of the “Merger” Doctrine
- § 14:35 Special license valuation issues—Valuation of older license or degree
- § 14:36 Special license valuation issues—Avoiding overlap between license and practice for both equitable distribution and maintenance purposes

TABLE OF CONTENTS

§ 14:37	Pension and retirement benefits
§ 14:38	Pension and retirement benefits—The <i>Majauskas</i> case
§ 14:39	Pension and retirement benefits—Non-vested rights
§ 14:40	Pension and retirement benefits—Marital component
§ 14:41	Pension and retirement benefits—Distribution and enforcement under ERISA
§ 14:42	Pension and retirement benefits—Distribution and enforcement outside ERISA
§ 14:43	Pension and retirement benefits—Disability pensions and social security disability
§ 14:44	Pension and retirement benefits—Burden of proof
§ 14:45	Separate property
§ 14:46	Separate property—Premarriage property
§ 14:47	Separate property—Inherited or gifted property
§ 14:48	Separate property—Personal injury compensation
§ 14:49	Separate property—Property acquired with separate property
§ 14:50	Separate property—Agreements
§ 14:51	Commingled property
§ 14:52	Appreciated separate property
§ 14:53	Appreciated separate property—The need for appreciation
§ 14:54	Appreciated separate property—Causation
§ 14:55	Appreciated separate property—Causation—Efforts of the non-titled spouse
§ 14:56	Distributive awards
§ 14:57	Equitable distribution—When available
§ 14:58	Equitable distribution—Marital property to be distributed equitably
§ 14:59	Equitable distribution—The legislative factors
§ 14:60	Equitable distribution—The legislative factors—Factor 1: Income and property of the parties
§ 14:61	Equitable distribution—The legislative factors—Factor 2: Length of marriage, age and health
§ 14:62	Equitable distribution—The legislative factors—Factor 3: Need for marital residence
§ 14:63	Equitable distribution—The legislative

NEW YORK LAW OF DOMESTIC RELATIONS

- § 14:64 factors—Factor 4: Loss of inheritance rights
Equitable distribution—The legislative factors—Factor 5: Loss of Health Insurance
- § 14:65 Equitable distribution—The legislative factors—Factor 6: Maintenance
- § 14:66 Equitable distribution—The legislative factors—Factor 7: Equitable claims
- § 14:67 Equitable distribution—The legislative factors—Factor 8: Liquidity
- § 14:68 Equitable distribution—The legislative factors—Factor 9: Future financial circumstances
- § 14:69 Equitable distribution—The legislative factors—Factor 10: Valuation and distribution difficulties
- § 14:70 Equitable distribution—The legislative factors—Factor 11: Tax consequences
- § 14:71 Equitable distribution—The legislative factors—Factor 12: Wasteful dissipation
- § 14:72 Equitable distribution—The legislative factors—Factor 13: Transfers without fair consideration
- § 14:73 Equitable distribution—The legislative factors—Barriers to remarriage
- § 14:74 Tax consequences
- § 14:75 Marital and economic fault
- § 14:76 Other possible equitable distribution factors
- § 14:77 Valuation dates and proof
- § 14:78 Valuation dates and proof—The statutory valuation range
- § 14:79 Valuation dates and proof—The selection of a date
- § 14:80 Valuation dates and proof—Marital residence
- § 14:81 Valuation dates and proof—The third department rule
- § 14:82 Valuation dates and proof—The active/passive test
- § 14:83 Valuation dates and proof—Post-trial changes in value
- § 14:84 Valuation dates and proof—Evidence of value on other dates
- § 14:85 Valuation dates and proof—Interest
- § 14:86 Valuation dates and proof—Evidence of valuation

TABLE OF CONTENTS

§ 14:87	Valuation dates and proof—Court-appointed experts
§ 14:88	Valuation dates and proof—Valuation by admission or stipulation
§ 14:89	Valuation dates and proof—Buy/sell agreements
§ 14:90	Valuation dates and proof—Valuation of businesses
§ 14:91	Valuation dates and proof—Findings
§ 14:92	Separate property to remain separate
§ 14:93	Exclusive occupancy of marital residence
§ 14:94	Mandate for distribution
§ 14:95	Mandate for distribution—Includes all property
§ 14:96	Mandate for distribution—Overlooked property
§ 14:97	Mandate for distribution—The judgment of the court
§ 14:98	Mandate for distribution—Need for the trial transcript
§ 14:99	Mandate for distribution—Death of a party
§ 14:100	Distribution principles—Assets
§ 14:101	Distribution principles—Option to purchase
§ 14:102	Distribution principles—Debt
§ 14:103	Burden of proof
§ 14:104	The decision and its review
§ 14:105	Practice considerations
§ 14:106	Practice considerations—Pleadings
§ 14:107	Practice considerations—Venue
§ 14:108	Practice considerations—The trier of fact
§ 14:109	Practice checklist

CHAPTER 15. MAINTENANCE

§ 15:1	Maintenance; statutory considerations
§ 15:2	Maintenance distinguished from spousal support
§ 15:3	The purpose of maintenance
§ 15:3.50	Post-divorce maintenance; General concepts; Actions commenced on or after January 23, 2016
§ 15:4	Discretion of the court
§ 15:5	Standard of living
§ 15:6	Income and property of parties
§ 15:7	Duration of marriage, age and health
§ 15:8	Present and future earning capacities of the parties

NEW YORK LAW OF DOMESTIC RELATIONS

- § 15:9 Ability to become self-supporting
- § 15:10 Foregone opportunities
- § 15:11 The presence of children in the household
- § 15:12 Tax consequences
- § 15:13 Contributions as spouse, parent, wage earner
and homemaker and to career of other party
- § 15:14 Wasteful dissipation of marital property
- § 15:15 Transfer or encumbrance of property made in
contemplation of a matrimonial action
- § 15:16 Loss of health insurance
- § 15:17 Marital fault and other factors
- § 15:18 Termination of maintenance by operation of
law
- § 15:19 Death of either party
- § 15:20 Remarriage
- § 15:21 Cohabitation
- § 15:22 Modification
- § 15:22.50 Temporary maintenance—Cases commenced prior to
October 25, 2015
- § 15:22.70 Temporary maintenance—Cases commenced on or
after October 25, 2015
- § 15:23 Practice checklist

CHAPTER 16. CHILD SUPPORT

- § 16:1 Historical background
- § 16:2 Child support proceedings
- § 16:3 Child support proceedings—Matrimonial actions
- § 16:4 Child support proceedings—Marital children
- § 16:5 Child support proceedings—Nonmarital children
- § 16:6 Child support proceedings—UIFSA proceedings
- § 16:7 The advent of support guidelines
- § 16:8 The New York child support guidelines
- § 16:9 The New York child support guidelines—
Effective date
- § 16:10 The judicial mandate
- § 16:11 Status as custodial parent
- § 16:12 Calculation of basic child support
- § 16:13 Calculation of basic child support—Procedure for
determination
- § 16:14 Calculation of basic child support—Income
reported on tax returns
- § 16:15 Calculation of basic child support—Gross
receipts

TABLE OF CONTENTS

§ 16:16	Calculation of basic child support—Pay stubs
§ 16:17	Calculation of basic child support—Bonus
§ 16:18	Calculation of basic child support—Additions to gross income
§ 16:19	Calculation of basic child support—Social Security benefits
§ 16:20	Calculation of basic child support—Imputation of income
§ 16:21	Calculation of basic child support—Other additions to income
§ 16:22	Calculation of basic child support—Income from relatives
§ 16:23	Calculation of basic child support—Non-recurring payments
§ 16:24	Calculation of basic child support—Reductions
§ 16:25	Calculation of basic child support—Modifications on cessation of maintenance
§ 16:26	Calculation of basic child support—Maintenance as income
§ 16:27	Calculation of basic child support—Contribution by companion
§ 16:28	Calculation of basic child support—Disclosure
§ 16:29	Calculation of basic child support—Method
§ 16:30	Calculation of basic child support—Reduction below poverty level
§ 16:31	Calculation of basic child support—Enforcement by social services official
§ 16:32	Deviating from the guidelines
§ 16:33	Needs of second family
§ 16:34	Income over the statutory baseline
§ 16:35	Interrelationship with other awards
§ 16:36	Shelter expenses
§ 16:37	Child care expenses
§ 16:38	Health care expenses
§ 16:39	Health insurance
§ 16:40	Life insurance
§ 16:41	Education expenses
§ 16:42	Children in multiple households
§ 16:43	Split and joint custody
§ 16:44	Temporary child support
§ 16:45	Termination of support liability
§ 16:46	Termination of support liability—Age 21
§ 16:47	Termination of support liability—Death

NEW YORK LAW OF DOMESTIC RELATIONS

- § 16:48 Termination of support liability—Adoption
- § 16:49 Termination of support liability—Denial of visitation
- § 16:50 Termination of support liability—
—Emancipation
- § 16:51 Termination of support liability—Abandonment by child
- § 16:52 Termination of support liability—Agreement provisions
- § 16:53 Child support agreements
- § 16:54 Effective date of child and spousal support awards
- § 16:55 Tax considerations
- § 16:56 Practice considerations
- § 16:57 Practice checklist

Volume 12

CHAPTER 17. TAX CONSIDERATIONS

- § 17:1 Introduction
- § 17:2 Distinguishing property divisions from alimony
- § 17:3 Transfers of property pursuant to property division
- § 17:4 Transfers of property pursuant to property division—After 1984, I.R.C. § 1041 overrules *Davis*
- § 17:5 Miscellaneous property transfer considerations—Employee’s qualified retirement plans
- § 17:6 Miscellaneous property transfer considerations—IRA plans
- § 17:7 Miscellaneous property transfer considerations—Marital residence—I.R.C. § 121 exclusion of gain
- § 17:8 Miscellaneous property transfer considerations—Future taxes as affecting valuation of property
- § 17:9 Alimony payments after 1984
- § 17:10 Alimony payments after 1984—Cash payment
- § 17:11 Alimony payments after 1984—Received by or on behalf of spouse—Payment made to third party on behalf of payee spouse
- § 17:12 Alimony payments after 1984—Received by or on behalf of spouse—Payment made to maintain property owned by payor spouse

TABLE OF CONTENTS

- § 17:13 Alimony payments after 1984—Received by or on behalf of spouse—Payment made to maintain property owned by payor spouse—Cooperative apartments
- § 17:14 Alimony payments after 1984—Not designated as not alimony
- § 17:15 Alimony payments after 1984—Not members of same household
- § 17:16 Alimony payments after 1984—No liability after death of payee spouse
- § 17:17 Alimony payments before 1985
- § 17:18 Alimony payments before 1985—Divorce or separation agreement
- § 17:19 Alimony payments before 1985—Periodic payment
- § 17:20 Alimony payments before 1985—Minimum six-year payment
- § 17:21 Miscellaneous alimony considerations—Separate return requirement
- § 17:22 Miscellaneous alimony considerations—Life insurance premiums
- § 17:23 Miscellaneous alimony considerations—Alimony trusts, I.R.C. § 682
- § 17:24 Miscellaneous alimony considerations—Alimony recapture
- § 17:25 Miscellaneous alimony considerations—Taxpayer identification number
- § 17:26 Miscellaneous alimony considerations—New York income tax deduction for alimony paid
- § 17:27 Child support payments
- § 17:28 Child support payments—Agreements after 1984
- § 17:29 Child support payments—Agreements after 1984—The divorce or separation agreement fixes a portion as payable for child support
- § 17:30 Child support payments—Agreements after 1984—The payment will be reduced on the happening of a contingency related to the child
- § 17:31 Child support payments—Agreements after 1984—The payment will be reduced at a time clearly associated with a contingency related to the child
- § 17:32 Child support payments—Agreements before 1985
- § 17:33 Dependent care credits and exclusions—Federal

NEW YORK LAW OF DOMESTIC RELATIONS

- dependent care credit
- § 17:34 Dependent care credits and exclusions—
Dependent care assistance program exclusion
- § 17:35 Dependents and dependency exemptions
- § 17:36 Dependent children and dependency
exemptions—Dependents
- § 17:37 Tax filing status
- § 17:38 Tax filing status—Unmarried
- § 17:39 Tax filing status—Married filing joint return
- § 17:40 Tax filing status—Married filing separate
returns
- § 17:41 Tax filing status—Head of household—After
1984
- § 17:42 Tax filing status—Head of household—
Abandoned spouse rule
- § 17:43 Tax filing status—Other tax status
considerations
- § 17:44 Innocent spouse provision
- § 17:45 Innocent spouse provision—Divorced and
separated spouses
- § 17:46 Innocent spouse provision—Petition to Tax
Court
- § 17:47 Innocent spouse provision—New York provision
- § 17:48 Innocent spouse provision—Equitable
distribution
- § 17:49 Deductibility of attorney's fees
- § 17:50 Deductibility of attorney's fees—Not deductible
under I.R.C. § 212(1) or I.R.C. § 212(2)
- § 17:51 Deductibility of attorney's fees—Fees for tax
counsel are deductible under I.R.C. § 212(3)
- § 17:52 Deductibility of attorney's fees—Fees
attributable to production or collection of
alimony are deductible
- § 17:53 Gift tax considerations
- § 17:54 Gift tax considerations—Transfer based on a
court decree
- § 17:55 Gift tax considerations—Transfer made between
spouses
- § 17:56 Gift tax considerations—Transfer made for
annual exclusion, educational or medical
expenses, or waiver of pension rights
- § 17:57 Gift tax considerations—Transfer where
consideration is deemed given
- § 17:58 Gift tax considerations—Transfer where support

TABLE OF CONTENTS

	rights relinquished
§ 17:59	Gift tax considerations—Transfer where immediately enforceable right in property relinquished
§ 17:60	Gift tax considerations—Split gifts
§ 17:61	Estate tax considerations
§ 17:62	Estate tax considerations—Post-death transfers required by marital settlement agreement
§ 17:63	Estate tax considerations—Post-death transfers required by marital settlement agreement—A transfer based on a court decree
§ 17:64	Estate tax considerations—Post-death transfers required by marital settlement agreement—A transfer where consideration is deemed given
§ 17:65	Estate tax considerations—Post-death transfers required by marital settlement agreement—A transfer where support rights are relinquished
§ 17:66	Estate tax considerations—Post-death transfers required by marital settlement agreement—A transfer where an immediately enforceable right in property is relinquished
§ 17:67	Estate tax considerations—Pre-death transfers included in decedent's gross estate
§ 17:68	Estate tax considerations—Other estate tax considerations: New York taxable base

CHAPTER 18. PRIVATE AND PUBLIC RETIREMENT PLANS

§ 18:1	Introduction
§ 18:2	Private retirement plans—Introduction
§ 18:3	Private retirement plans—Overview of the various types of retirement plans
§ 18:4	Private retirement plans—Overview of the various types of retirement plans—Defined contribution plans
§ 18:5	Private retirement plans—Overview of the various types of retirement plans—Defined benefit plans
§ 18:6	Private retirement plans—Overview of the various types of retirement plans—The hybrid plan
§ 18:7	Private retirement plans—Participant vesting and accrual of benefits
§ 18:8	Private retirement plans—Participant vesting

NEW YORK LAW OF DOMESTIC RELATIONS

- and accrual of benefits—Vesting events
- § 18:9 Private retirement plans—Participant vesting and accrual of benefits—Vesting schedules
- § 18:10 Private retirement plans—Participant vesting and accrual of benefits—Accrued benefit
- § 18:11 Private retirement plans—Information needed to determine amount of benefit
- § 18:12 Private retirement plans—Payment of benefits
- § 18:13 Private retirement plans—Payment of benefits—Survivor annuities
- § 18:14 Private retirement plans—Payment of benefits—Marriage requirement
- § 18:15 Private retirement plans—Payment of benefits—Survivor annuities: spousal consent
- § 18:16 Private retirement plans—Payment of benefits—While the participant is alive
- § 18:17 Private retirement plans—Payment of benefits—The participant dies before distributions begin
- § 18:18 Private retirement plans—Taxing the distributions—Income taxes
- § 18:19 Private retirement plans—Taxing the distributions—Rollovers to defer income taxation
- § 18:20 Private retirement plans—Qualified domestic relations orders
- § 18:21 Private retirement plans—Qualified domestic relations orders—QDRO enforcement
- § 18:22 Private retirement plans—Qualified domestic relations orders—How and when benefits are received
- § 18:23 Private retirement plans—Qualified domestic relations orders—Benefits that can be received and options upon receipt
- § 18:24 Private retirement plans—Qualified domestic relations orders—Tax treatment of payments to alternate payee
- § 18:25 Federal civil service retirement system—Introduction
- § 18:26 Federal civil service retirement system—Eligibility requirements
- § 18:27 Federal civil service retirement system—Benefits available to the participant
- § 18:28 Federal civil service retirement system—Benefits available to the former spouse

TABLE OF CONTENTS

§ 18:29	Federal civil service retirement system— Payment of benefits to former spouses
§ 18:30	New York State government retirement system—Introduction
§ 18:31	New York State government retirement system—Vesting requirements
§ 18:32	New York State government retirement system—Form of benefits available to NYSERS members
§ 18:33	New York State government retirement system—Spousal benefits
§ 18:34	New York State government retirement system—Payment of benefits
§ 18:35	New York State government retirement system—Taxation of benefits
§ 18:36	Military service benefits—Eligibility requirements
§ 18:37	Military service benefits—Form of benefits allowed to participants
§ 18:38	Military service benefits—Benefits payable to former spouses
§ 18:39	Foreign service benefit plans—Introduction
§ 18:40	Foreign service benefit plans—Eligibility requirements
§ 18:41	Foreign service benefit plans—Form of benefits available to the participant
§ 18:42	Foreign service benefit plans—Benefits available to the participant's former spouse
§ 18:43	Railroad employee benefit plans
§ 18:44	Railroad employee benefit plans—Eligibility requirements and types of benefits for employees
§ 18:45	Railroad employee benefit plans—Benefits for spouses and former spouses
§ 18:46	Social security—Introduction
§ 18:47	Social security—Eligibility requirements for old age insurance benefits
§ 18:48	Social security—Old age insurance benefits available to individuals
§ 18:49	Social security—Old age insurance benefits to the former wife
§ 18:50	Social security—Surviving divorced spouse old age insurance benefits
§ 18:51	Social security—Spousal old age insurance

- benefits
- § 18:52 Social security—Surviving spouse old age insurance benefits
- § 18:53 Social security—Disability benefits
- § 18:54 Social security—Children’s benefits
- § 18:55 Social security—Parental benefits
- § 18:56 Social security—Miscellaneous provisions
- § 18:57 Social security—Treatment of World War II veterans
- § 18:58 Supplemental Social Security (“SSI”)
- § 18:59 Equitable distribution considerations for retirement plans
- § 18:60 Conclusion: a few words of advice

CHAPTER 19. PROFESSIONAL FEES AND CONDUCT

- § 19:1 Attorney’s fees—In general
- § 19:2 Actions in which awards may be made
- § 19:3 Stage of proceedings in which awards may be made
- § 19:4 Interim counsel fees
- § 19:5 Post-trial awards
- § 19:6 Appellate counsel fees
- § 19:7 Counsel fees in enforcement proceedings
- § 19:8 Litigation expenses generally
- § 19:9 Counsel fees as necessities
- § 19:10 Retainer arrangements
- § 19:11 Written retainer agreements
- § 19:12 Security interests
- § 19:13 Fee arbitration
- § 19:14 Closing statements
- § 19:15 Sexual relationship with client

CHAPTER 20. JURISDICTION TO DETERMINE CHILD CUSTODY

- § 20:1 Introduction to UCCJEA & PKPA
- § 20:2 Introduction to UCCJEA & PKPA—Overview and purpose of UCCJEA
- § 20:3 Introduction to UCCJEA & PKPA—Overview of PKPA
- § 20:4 Definitions of terms
- § 20:5 Jurisdiction to make child custody

TABLE OF CONTENTS

	determinations
§ 20:6	Jurisdiction to make child custody determinations—Home state basis for jurisdiction
§ 20:7	Jurisdiction to make child custody determinations—Significant connection and substantial evidence basis
§ 20:8	Jurisdiction to make child custody determinations—Emergency basis
§ 20:9	Jurisdiction to make child custody determinations—Lack of alternative basis
§ 20:10	Grounds for declining exercise of jurisdiction
§ 20:11	Grounds for declining exercise of jurisdiction—Simultaneous proceedings in other states
§ 20:12	Grounds for declining exercise of jurisdiction—Inconvenient forum
§ 20:13	Grounds for declining exercise of jurisdiction—Misconduct of contestant
§ 20:14	Interstate recognition and enforcement of custody decrees
§ 20:15	Modification of custody decrees of other states
§ 20:16	International custody disputes
§ 20:17	Powers of the court under Uniform Child Custody Jurisdiction and Enforcement Act
§ 20:18	Procedural matters—Notice and opportunity to be heard
§ 20:19	Procedural matters—Pleadings and affidavits; duty to disclose
§ 20:20	Procedural matters—Parties and appearances
§ 20:21	Procedural matters—Exchange of information and witnesses
§ 20:22	State law jurisdictional principles—Subject-matter jurisdiction of Supreme Court
§ 20:23	State law jurisdictional principles—Proceeding in Supreme Court by writ of <i>habeas corpus</i>
§ 20:24	State law jurisdictional principles—Jurisdiction of the Family Court

CHAPTER 21. CUSTODY AND VISITATION

§ 21:1	Custody and visitation—Overall considerations
§ 21:2	Custody and visitation—Standards used to determine custody

NEW YORK LAW OF DOMESTIC RELATIONS

- § 21:3 Custody and visitation—Visitation or access
- § 21:4 Custody and visitation—Changes in custody law
- § 21:5 Custody and visitation—Changes in custody law—Joint custody or shared decision-making
- § 21:6 Custody and visitation—Recent changes in custody law—Gender neutral precepts
- § 21:7 Custody and visitation—Changes in custody law—Rights of unwed fathers
- § 21:8 Custody and visitation—Changes in custody law—Children’s rights
- § 21:9 Custody and visitation—Changes in custody law—Abuse
- § 21:10 Custody and visitation—Changes in custody law—Federal legislation
- § 21:11 Jurisdiction to initiate custody proceedings
- § 21:12 Subject matter jurisdiction under the UCCJEA and PKPA
- § 21:13 Standards in custody determinations—Between parents
- § 21:14 Standards in custody determinations—Between a parent and third party
- § 21:15 Standards in custody determinations—Between a parent and third party—Extraordinary circumstances
- § 21:16 Best interests of the child
- § 21:17 Best interests of the child—Factors considered
- § 21:18 Best interests of the child—Factors considered—Parental fitness
- § 21:19 Best interests of the child—Factors considered—Quality of interaction between parent and child
- § 21:20 Totality of circumstances
- § 21:21 Primary caretaker
- § 21:22 Primary caretaker—Defined
- § 21:23 Stability
- § 21:24 Home environment—Ability to meet child’s needs
- § 21:25 Home environment—Physical safety of the home
- § 21:26 Home environment—Parents ability to nurture
- § 21:27 Home environment—Financial fitness
- § 21:28 Day care arrangements
- § 21:29 Drugs and alcohol
- § 21:30 Drugs and alcohol—Effect of rehabilitation
- § 21:31 Drugs and alcohol—Drug testing
- § 21:32 Mental health of the parents

TABLE OF CONTENTS

§ 21:33	Mental health of the parents—Physical and mental examination
§ 21:34	Physical health of the parent
§ 21:35	Physical health of the parent—AIDS testimony
§ 21:36	Parental sexual conduct—Heterosexual activity
§ 21:37	Parental sexual conduct—Homosexuality
§ 21:38	Domestic violence
§ 21:39	Abuse, neglect, abandonment, and interference with visitation rights
§ 21:40	Child's preferences
§ 21:41	Child's preferences—Weight accorded preference
§ 21:42	Child's preferences—Reason for preference
§ 21:43	Child's preferences—Totality of circumstances
§ 21:44	Child's preferences— <i>In camera</i> or <i>Lincoln</i> hearing
§ 21:45	Split custody
§ 21:46	Constitutional considerations—Religion
§ 21:47	Constitutional considerations—Religion—Agreements between the parties
§ 21:48	Constitutional considerations—Religion—Absence of agreement
§ 21:49	Constitutional considerations—Race
§ 21:50	Joint custody—Introduction
§ 21:51	Joint custody—Legal and physical custody components
§ 21:52	Joint custody—Cooperation between parents
§ 21:53	Joint custody—Cooperation between parents—"Limited" joint legal custody
§ 21:54	Obligations and responsibilities of joint custody
§ 21:55	The right of visitation
§ 21:56	The right of visitation—Reasonable and meaningful access
§ 21:57	The right of visitation—No authority to compel non-custodial parent to visit
§ 21:58	Denial of visitation
§ 21:59	Denial of visitation—Telephone communication in lieu of visitation
§ 21:60	Restricted or supervised visitation
§ 21:61	Restricted or supervised visitation—Health concerns
§ 21:62	Restricted or supervised visitation—Child's emotional well being
§ 21:63	Restricted or supervised visitation—Medical

NEW YORK LAW OF DOMESTIC RELATIONS

- treatment as a component of the order
- § 21:64 Restricted or supervised visitation—AIDS
- § 21:65 Restricted or supervised visitation—
Cohabitation
- § 21:66 Restricted or supervised visitation—Religious
restrictions
- § 21:67 Restricted or supervised visitation—Animosity
between parents
- § 21:68 Restricted or supervised visitation—Midweek
visitation
- § 21:69 Restricted or supervised visitation—Travel
restrictions
- § 21:70 Necessity for hearing
- § 21:71 Forensic experts
- § 21:72 Forensic experts—Reports not admissible
without stipulation or consent
- § 21:73 Forensic experts—Designation
- § 21:74 Forensic experts—Weight accorded to reports
and recommendations
- § 21:75 Attorneys for children
- § 21:76 Grandparent visitation rights—DRL § 72
- § 21:77 Grandparent visitation rights—DRL § 72—
Visitation limited to grandparents
- § 21:78 Grandparent visitation rights—DRL § 72—
Standing
- § 21:79 Grandparent visitation rights—DRL § 72—
Hearing to determine whether visitation is in
the child's best interests
- § 21:80 Grandparent visitation rights—DRL § 72—
Visitation with adopted grandchild
- § 21:81 Sibling visitation
- § 21:82 Visitation by a nonparent other than a
grandparent or sibling

CHAPTER 22. RELOCATION WITH CHILDREN

- § 22:1 Overview
- § 22:2 Exceptional circumstances—A discarded factor
- § 22:3 The best interest standard
- § 22:4 Economic betterment as a factor
- § 22:5 Economic necessity as a factor
- § 22:6 Remarriage as a factor
- § 22:7 Health or educational needs of parent or child as

TABLE OF CONTENTS

- a factor
- § 22:8 Custodial parent's desire for a "new life"
- § 22:9 Extent of noncustodial parent's involvement
- § 22:10 Child's preference
- § 22:11 Radius clauses
- § 22:12 Relocation adjustments

CHAPTER 23. MODIFICATION AND ENFORCEMENT OF CUSTODY AND VISITATION AWARDS

- § 23:1 Modification—In general
- § 23:2 Modification—Jurisdictional issues under UCCJEA and PKPA
- § 23:3 Modification—Jurisdiction—Supreme and Family Court
- § 23:4 Modification—Grounds
- § 23:5 Modification—Grounds—Continuity of custody
- § 23:6 Modification—Grounds—Totality of circumstances
- § 23:7 Modification—Grounds—Abuse and endangerment
- § 23:8 Modification—Grounds—Interference with visitation rights
- § 23:9 Modification—Grounds—Preference of child
- § 23:10 Modification—Grounds—Antagonism between parents
- § 23:11 Modification—Effect of agreement by the parties
- § 23:12 Modification—Modification of visitation arrangements
- § 23:13 Modification—Requirement of a hearing
- § 23:14 Enforcement—In general
- § 23:15 Enforcement—Interstate recognition and enforcement
- § 23:16 Enforcement—Parent locator service
- § 23:17 Enforcement—International enforcement and the Hague Convention
- § 23:18 Enforcement—*Habeas Corpus*
- § 23:19 Enforcement—Contempt
- § 23:20 Enforcement—Suspension of support
- § 23:21 Enforcement—Criminal sanctions
- § 23:22 Enforcement—Orders of protection and injunctions

CHAPTER 24. ENFORCEMENT PROCEEDINGS

- § 24:1 The New York State Support Enforcement Act of 1985
- § 24:2 Concurrent jurisdiction; Supreme Court and Family Court
- § 24:3 Support and non-support obligations; available enforcement remedies
- § 24:4 Security
- § 24:5 Sequestration and receivership
- § 24:6 Enforcement by execution of judgment; arrear
- § 24:7 Enforcement by execution of judgment; arrear—Mode of application
- § 24:8 Enforcement by execution of judgment; arrear—Hearing requirement
- § 24:9 Enforcement by execution of judgment; arrear—Waiver, termination, or suspension of support
- § 24:10 Enforcement by execution of judgment; arrear—Defaulting party's failure to move for relief prior to accrual of arrear
- § 24:11 Enforcement by execution of judgment; arrear—Entry of *ex parte* judgment pursuant to CPLR 2222 prohibited
- § 24:12 Enforcement by execution of judgment; arrear—Statute of limitations pertaining to support arrear
- § 24:13 Enforcement by execution of judgment; arrear—Payment of interest upon willful default
- § 24:14 Accrual of arrear during pending enforcement proceeding
- § 24:15 Enforcement by contempt proceeding
- § 24:16 Enforcement by contempt proceeding—Commencing the proceeding
- § 24:17 Enforcement by contempt proceeding—Conditions precedent; alternative relief
- § 24:18 Enforcement by contempt proceeding—Notice requirements; waiver; service
- § 24:19 Enforcement by contempt proceeding—Hearing requirement
- § 24:20 Enforcement by contempt proceeding—Required finding of the court
- § 24:21 Enforcement by contempt proceeding—

TABLE OF CONTENTS

	Punishment
§ 24:22	Enforcement by contempt proceeding—Payment suspended during incarceration
§ 24:23	Income execution for support enforcement
§ 24:24	Income execution for support enforcement— Issuance of the income execution
§ 24:25	Income execution for support enforcement— Form of the execution
§ 24:26	Income execution for support enforcement— Service of income execution on debtor; review of mistakes
§ 24:27	Income execution for support enforcement—Levy and deduction
§ 24:28	Income execution for support enforcement— Deductions
§ 24:29	Income execution for support enforcement— Debtor's termination of employment
§ 24:30	Income execution for support enforcement— Priority
§ 24:31	Income deduction order for support enforcement
§ 24:32	State income tax refund intercept program
§ 24:33	Suspension of driver's licenses
§ 24:34	Suspension of professional licenses
§ 24:35	Medical support enforcement

CHAPTER 25. MODIFICATION OF SUPPORT AND MAINTENANCE AWARDS

§ 25:1	Introduction; primary statutes
§ 25:2	Actions or proceedings begun prior to July 19, 1980; alimony generally
§ 25:3	Separate and concurrent jurisdiction of the Supreme Court and Family Court
§ 25:4	Separate and concurrent jurisdiction of the Supreme Court and Family Court—Procedure upon referral
§ 25:5	Separate and concurrent jurisdiction of the Supreme Court and Family Court—Child support
§ 25:6	Modification by Family Court
§ 25:7	Notice; application requirements; continuing jurisdiction of the Supreme Court; venue
§ 25:8	Resolution of disputed facts; hearing; burden of proof

NEW YORK LAW OF DOMESTIC RELATIONS

- § 25:9 Merger of agreement into divorce judgment
- § 25:10 Agreement made prior to July 19, 1980,
incorporated but *not merged* into judgment—
Alimony
- § 25:11 Agreement made prior to July 19, 1980,
incorporated but *not merged* into judgment—
Child support
- § 25:12 Agreement incorporated but *not merged*; On or
after July 19, 1980; “extreme hardship”
standard as to modification of maintenance
- § 25:13 Constitutionality of DRL § 236, Part B (9)(b)
- § 25:14 Existence of a prior order; no surviving written
agreement
- § 25:15 Modification of maintenance awards
- § 25:16 Modification of maintenance awards—*Pendente
lite* maintenance
- § 25:17 Modification of child support—Existence of a
surviving separation agreement or prior order
made on or after October 13, 2010
- § 25:18 Modification of child support—Existence of a
surviving separation agreement or prior order
prior to October 13, 2010
- § 25:19 Modification of child support—Application of the
Child Support Standards Act
- § 25:20 Adjustment of child support orders

CHAPTER 26. IMPACT OF BANKRUPTCY UPON MATRIMONIAL LAW

- § 26:1 Introduction
- § 26:2 Fundamentals of the Bankruptcy Code
- § 26:3 Fundamentals of the Bankruptcy Code—Recent
family law amendments to the Bankruptcy
Code
- § 26:4 Fundamentals of the Bankruptcy Code—
Chapter 7
- § 26:5 Fundamentals of the Bankruptcy Code—
Chapter 13
- § 26:6 Fundamentals of the Bankruptcy Code—
Voluntary v. involuntary
- § 26:7 Fundamentals of the Bankruptcy Code—Role of
the Chapter 7 trustee
- § 26:8 Fundamentals of the Bankruptcy Code—Section

TABLE OF CONTENTS

	341 first meeting of creditors
§ 26:9	Property of the estate—Chapters 7 and 11
§ 26:10	Property of the estate—Chapter 13
§ 26:11	Property of the estate—Debtor’s property interests are defined by state law
§ 26:12	Property of the estate—Abandonment of property of the estate
§ 26:13	Core v. non-core proceedings
§ 26:14	Removal and remand of proceedings
§ 26:15	Abstention
§ 26:16	Exempt property
§ 26:17	Exempt property—Applicable New York State exemptions
§ 26:18	Exempt property—Pensions and other retirement plans
§ 26:19	Exempt property—Objection to exemptions
§ 26:20	Rights of co-owners of property
§ 26:21	Rights of co-owners of property—Tenancy by the entirety
§ 26:22	Rights of co-owners of property—Section 363(h)–(j): Trustee’s sale of entirety property
§ 26:23	Rights of co-owners of property— <i>In re Persky</i>
§ 26:24	The automatic stay
§ 26:25	The automatic stay—Obtaining relief from the automatic stay
§ 26:26	The automatic stay—Duration
§ 26:27	The automatic stay—Effect upon matrimonial proceedings
§ 26:28	The automatic stay—Effect upon non-economic issues
§ 26:29	The automatic stay—Relief to pursue support
§ 26:30	The automatic stay—Effect upon equitable distribution
§ 26:31	The automatic stay—The Chapter 13 co-debtor stay
§ 26:32	The automatic stay—Violations of the stay
§ 26:33	The trustee’s avoiding powers
§ 26:34	The trustee’s avoiding powers—Avoidance of fraudulent transfers: Section 544
§ 26:35	The trustee’s avoiding powers—Avoidance of statutory liens: Section 545
§ 26:36	The trustee’s avoiding powers—Avoidance of preferences: Section 547
§ 26:37	The trustee’s avoiding powers—Avoidance of

NEW YORK LAW OF DOMESTIC RELATIONS

- fraudulent conveyances: Section 548
- § 26:38 The trustee's avoiding powers—Avoidance of post-petition transfers: Section 549
- § 26:39 The trustee's avoiding powers—Avoidance of certain setoffs: Section 553
- § 26:40 The trustee's avoiding powers—Individual debtor avoidance power: Section 522
- § 26:41 Section 523(a)(5): Exception to dischargeability
- § 26:42 Section 523(a)(5): Exception to dischargeability—Burden of proof
- § 26:43 Conclusion

Table of New and Retitled Sections

CHAPTER 1. AN OVERVIEW OF THE DIVORCE PROCESS: DIVORCE AND SEPARATION

§ 1:18.50 Grounds for divorce—Irretrievable breakdown *[New]*

CHAPTER 4. COURTSHIP

§ 4:3 Preserved courtship causes of action *[Retitled]*

CHAPTER 10. DIVORCE

§ 10:69.50 Irretrievable breakdown *[New]*

CHAPTER 14. EQUITABLE DISTRIBUTION OF PROPERTY

§ 14:44.50 Children's accounts *[New]*

§ 14:72.30 Equitable distribution—The legislative factors—Factor 14:
Domestic Violence *[New]*

§ 14:72.50 Equitable distribution—The legislative factors—Factor 15:
Best Interests of Companion Animals *[New]*

§ 14:108.50 Practice considerations—Bifurcation of issues *[New]*

CHAPTER 15. MAINTENANCE

§ 15:3.50 Post-divorce maintenance; General concepts; Actions com-
menced on or after January 23, 2016 *[New]*

§ 15:22.50 Temporary maintenance—Cases commenced prior to
October 25, 2015 *[Retitled]*

§ 15:22.70 Temporary maintenance—Cases commenced on or after
October 25, 2015 *[New]*