

Table of Contents

CHAPTER 1. ANTENUPTIAL AGREEMENTS

- § 1:1 Antenuptial agreements—Contracting to alter incidents of marriage
- § 1:2 —General requirements for enforcement
- § 1:3 —Postnuptial agreements distinguished
- § 1:4 —Burden of proof
- § 1:5 —Scope of agreement—Matters covered
- § 1:6 —Not bar to other contractual agreements between spouses
- § 1:7 —Triggering events—Death or divorce
- § 1:8 —Choice of law
- § 1:9 —Consideration
- § 1:10 —Requirement of writing
- § 1:11 —Disclosure of assets predicate to enforceability
- § 1:12 —Unconscionability as defense to enforcement
- § 1:13 —Two-point test for determining unconscionability
- § 1:14 —Subject to rules of contract interpretation
- § 1:15 —Avoiding stereotypes underlying historic interpretation—Rule requiring interpretation in favor of wife
- § 1:16 —Admissibility of parol evidence
- § 1:17 —Fraud, duress, or undue influence as defense to enforcement
- § 1:18 —Modification or rescission as defense to enforcement
- § 1:19 —Advising clients when to consider
- § 1:20 —Benefit of independent counsel
- § 1:21 —Recordation
- § 1:22 —Form

CHAPTER 2. UNMARRIED COHABITATION

- § 2:1 Unmarried cohabitation—Domestic partners and other relationships
- § 2:2 —Cause of action
- § 2:3 —Procedural differences in suits
- § 2:4 —Property rights do not arise from relationship
- § 2:5 —Gifts between long-term cohabitants
- § 2:6 —Parties may agree to joint ventures or partnerships
- § 2:7 —Claims based on value of services contributed during relationship

DOMESTIC RELATIONS LAW

- § 2:8 —Ownership interest based on fraud or unjust enrichment
- § 2:9 —Relevant factors in proving agreement to share assets
- § 2:10 —Role of Statute of Frauds
- § 2:11 —Loans between cohabitants
- § 2:12 —Agreements to provide support after relationship terminates
- § 2:13 —Suggested contents of cohabitation agreement
- § 2:14 —Litigation involving incidents of marriage
- § 2:15 —Infliction of emotional distress and loss of consortium
- § 2:16 —Insurance benefits
- § 2:17 —Housing discrimination
- § 2:18 —Same sex marriage

CHAPTER 3. MARRIAGE

- § 3:1 Marriage—State ability to regulate
- § 3:2 —General regulations
- § 3:3 —Prohibitions
- § 3:4 —Incestuous
- § 3:5 —Bigamous
- § 3:6 — —Avoiding harsh consequences of invalidation
- § 3:7 — —Not invalid for all purposes
- § 3:8 — —Practical problems
- § 3:9 — —Collateral attack
- § 3:10 —Same sex
- § 3:11 —Federal constitutional validity of prohibitions against same-sex marriage
- § 3:12 —State constitutional challenges to same-sex marriage prohibition
- § 3:13 —Impact of federal Defense of Marriage Act
- § 3:14 —To person adjudged mentally disabled
- § 3:15 —Underage
- § 3:16 —Improperly solemnized
- § 3:17 —Rules affecting proof
- § 3:18 —Choice of law rules
- § 3:19 —Limitations on direct and collateral attack
- § 3:20 —Limitations on standing to attack invalid marriage
- § 3:21 —Time limits for attacking
- § 3:22 —Other statutory problems
- § 3:23 —Presumption in aid of marriage
- § 3:24 —Common law
- § 3:25 —Putative spouses
- § 3:26 —Breach of promise to marry not recognized

TABLE OF CONTENTS

- § 3:27 Petition and order for permission to marry—Form
- § 3:28 Motion for hearing on permission to marry—Form
- § 3:29 Order granting or denying permission to marry—Form

CHAPTER 4. PROPERTY RIGHTS DURING MARRIAGE

- § 4:1 Property rights during marriage—Common law separate property system
- § 4:2 —Proof of ownership
- § 4:3 —Joint ownership of real property
- § 4:4 —Tenancy in common
- § 4:5 —Tenancy by entirety
- § 4:6 — —Creation
- § 4:7 — —Creditor’s rights
- § 4:8 —Creditor’s rights in property held by one spouse
- § 4:9 —Joint bank accounts
- § 4:10 —Necessaries doctrine
- § 4:11 — —Modern objections
- § 4:12 —Liabilities based on agency or commercial partnership
- § 4:13 —Liability based on promissory notes or credit cards
- § 4:14 —Creditor’s ability to avoid unrecorded gifts between spouses
- § 4:15 —Fraudulent conveyance to spouse
- § 4:16 —Transfers in fraud of spousal rights
- § 4:17 Clause in original divorce petition alleging fraudulent conveyance—Form

CHAPTER 5. DOMESTIC VIOLENCE

- § 5:1 Domestic violence—Who may file for orders
- § 5:2 —No residency requirement for filing petition
- § 5:3 —Orders and due process
- § 5:4 —Due process—Resident defendant
- § 5:5 — —Nonresident defendant
- § 5:6 —Emergency protective orders affecting child custody
- § 5:7 —Emergency protective orders affecting child support
- § 5:8 —Venue
- § 5:9 —EPO by either district or circuit court
- § 5:10 —Petition
- § 5:11 —Ex parte orders
- § 5:12 —Hearing date if no ex parte order issues
- § 5:13 —Defining and proving
- § 5:14 —Orders entered after hearing

DOMESTIC RELATIONS LAW

- § 5:15 —Entry of orders into LINK
- § 5:16 —Violence Against Women Act
- § 5:17 —Double jeopardy problems
- § 5:18 —Suits against public officials
- § 5:19 —Suits against perpetrators
- § 5:20 Domestic violence summons—Form
- § 5:21 Domestic violence petition/motion—Form
- § 5:22 Domestic violence emergency protective order and summons—Form
- § 5:23 Domestic violence order—Form
- § 5:24 Domestic violence forthwith order of arrest—Form
- § 5:25 Domestic violence show cause order—Form
- § 5:26 Motion to amend prior domestic violence order—Form
- § 5:27 Warrant of arrest—Domestic violence bench warrant—Form
- § 5:28 Domestic violence temporary foreign protective affidavit and order—Form
- § 5:29 Domestic violence foreign protective affidavit and order—Form
- § 5:30 Affidavit and order amending certified domestic violence foreign protective order—Form
- § 5:31 Affidavit and temporary order amending uncertified domestic violence foreign protective order—Form

CHAPTER 6. PROTECTIVE SERVICES FOR CHILDREN

- § 6:1 Protective services—Scope of chapter
- § 6:2 —District court jurisdiction over juvenile actions
- § 6:3 —Jurisdictional conflicts between circuit and district courts in some cases
- § 6:4 —Statutory petitions for immediate entitlement
- § 6:5 —Parent's duty to protect child
- § 6:6 —Statutory definitions of neglect and abuse
- § 6:7 —Medical neglect
- § 6:8 — —Defenses
- § 6:9 —Dependency
- § 6:10 —Duty to report child abuse and neglect
- § 6:11 —Cabinet's duty to investigate reports of child abuse
- § 6:12 —Emergency removal of child from home
- § 6:13 —Juvenile emergency custody orders under KRS 610.010
- § 6:14 —Temporary removal hearings—Statutory time limits
- § 6:15 — —Substantive standards; burden of proof
- § 6:16 — —Hearsay evidence

TABLE OF CONTENTS

§ 6:17	—Evidence to be considered by court in abuse, dependency, or neglect proceedings
§ 6:18	—Temporary custody orders
§ 6:19	—Full adjudicatory hearings
§ 6:20	—Dispositional alternatives
§ 6:21	—Appeals
§ 6:22	—Family preservation, reasonable efforts, and permanency planning—Federal requirements
§ 6:23	—Reasonable efforts—State requirements
§ 6:24	—Visitation after child's removal from home
§ 6:25	—Assessment of child's educational needs
§ 6:26	—Permanency planning for committed children
§ 6:27	—Court appointed special advocates
§ 6:28	—Status offenses
§ 6:29	—Status compared to dependency and neglect
§ 6:30	—Status offenders—Constitutional rights
§ 6:31	—Complaints initiated by persons other than peace officers
§ 6:32	—Temporary change in custody
§ 6:33	—Child taken into custody by peace officer
§ 6:34	—Court process—Arraignment
§ 6:35	—Bifurcated hearings requirement—Adjudication and disposition determined in separate hearings
§ 6:36	—Detention defined
§ 6:37	—Status offenders—Detention
§ 6:38	—Release
§ 6:39	—Status offender detention—Permissible locations
§ 6:40	—Time limits
§ 6:41	—Detention hearing—Substantive requirements
§ 6:42	—Confidentiality and expungement of juvenile court record
§ 6:43	—Court costs
§ 6:44	—Civil suits against child abusers
§ 6:45	—Children as witnesses
§ 6:46	Juvenile complaint/petition—Form
§ 6:47	Temporary custody order—Form
§ 6:48	Order for medical examination or treatment of juvenile—Form
§ 6:49	Juvenile summons—Form
§ 6:50	Promise to appear in juvenile proceeding—Form
§ 6:51	Juvenile summons for witnesses—Form
§ 6:52	Order for expungement of juvenile record—Form
§ 6:53	Petition for expungement of juvenile record—Form
§ 6:54	Juvenile status or delinquency disposition—Form

- § 6:55 Order to take juvenile into custody—Form
- § 6:56 Juvenile detention order for status offense—Form
- § 6:57 Order appointing public defender in juvenile proceeding—Form

CHAPTER 7. COUNSELING, CUSTODY EVALUATION, MEDIATION, AND OTHER PRELIMINARY ISSUES

- § 7:1 Preliminary issues—Divorce and social policy
- § 7:2 —Divorce decision
- § 7:3 —Divorce process
- § 7:4 —Voluntary counseling
- § 7:5 —Court-ordered counseling and conciliation conferences
- § 7:6 —Custody evaluation
- § 7:7 —Parent education classes
- § 7:8 —Counseling for domestic violence offenders
- § 7:9 —Mediation
- § 7:10 —Other dispute resolution mechanisms
- § 7:11 —Domestic relations commissioners

CHAPTER 8. DIVORCE PRACTICE

- § 8:1 Divorce practice—General pointers
- § 8:2 —Divorce petition
- § 8:3 —Residency
- § 8:4 — —Proof
- § 8:5 —Venue
- § 8:6 —Notice to respondent spouse
- § 8:7 —Waiver and entry of appearance
- § 8:8 —Grounds
- § 8:9 —Waiting periods
- § 8:10 —Conciliation conferences
- § 8:11 —Parties
- § 8:12 —Death of spouse during divorce proceeding
- § 8:13 —Joinder of causes of action with divorce
- § 8:14 —Filing answer to petition
- § 8:15 —Temporary orders
- § 8:16 —Emergency protective orders
- § 8:17 —Injunctions and restraining orders
- § 8:18 —Temporary child support
- § 8:19 —Discovery
- § 8:20 —Depositions

TABLE OF CONTENTS

§ 8:21	—Requests for admissions
§ 8:22	—Interrogatories
§ 8:23	—Pre-trial conferences
§ 8:24	—Trial
§ 8:25	—Expert witnesses
§ 8:26	—Findings of fact and conclusions of law
§ 8:27	—Family court
§ 8:28	Uncontested divorce—Checklist
§ 8:29	Contested divorce—Checklist
§ 8:30	Documents to be provided by client—Checklist
§ 8:31	Client information sheet
§ 8:32	Affidavit and entry of appearance—Form
§ 8:33	Petition—Form
§ 8:34	Answer to petition—Form
§ 8:35	Answer to petition and request for reconciliation conference—Form
§ 8:36	Injunction bond—Form
§ 8:37	Interrogatories—Form
§ 8:38	—Alternative form
§ 8:39	Notice to take deposition and request for production of documents—Form
§ 8:40	Notice to produce and request for documents—Form
§ 8:41	Motion to compel answers to interrogatories and production of documents—Form
§ 8:42	Waiver of interrogatories—Form
§ 8:43	Motion for exclusive, pendente lite occupancy of marital residence—Form
§ 8:44	Decree—Form
§ 8:45	Order of wage assignment—Form
§ 8:46	Name change following divorce—Petition—Form
§ 8:47	—Form
§ 8:48	Appointment of warning order attorney—Form

CHAPTER 9. LEGAL SEPARATION

§ 9:1	Legal separation—Agreement of both parties required
§ 9:2	—Statutory requirements
§ 9:3	—Court review of agreements necessary
§ 9:4	—Separation agreements as contracts
§ 9:5	—Living apart
§ 9:6	—Use of contractual agreements to alter rights
§ 9:7	—Contrasted with divorce
§ 9:8	—Agreement controls parties' rights

DOMESTIC RELATIONS LAW

- § 9:9 —Agreement must be in writing
- § 9:10 —Agreements must be supported by consideration
- § 9:11 —Agreements must coincide closely with actual separation
- § 9:12 —Court must approve agreement
- § 9:13 —Agreements must be found not unconscionable as to financial matters
- § 9:14 —Provisions for custody and child support must be reviewed independently by court
- § 9:15 —Agreements govern inheritance rights
- § 9:16 —Agreement's impact on third-party rights
- § 9:17 —Agreements may not be terminated unilaterally
- § 9:18 —Effect of parties' reconciliation
- § 9:19 —Proving reconciliation
- § 9:20 —Impact of reconciliation on agreement
- § 9:21 —Reconciliation agreements
- § 9:22 —Converting to divorce
- § 9:23 —Enforcement of decree
- § 9:24 —Modification of agreement
- § 9:25 Separation agreement—Form
- § 9:26 Qualified domestic relations order—Form
- § 9:27 Separation agreement order—Form
- § 9:28 Reconciliation agreement—Form

CHAPTER 10. ANNULMENT

- § 10:1 Annulment—Lack of capacity to consent
- § 10:2 — —Mental incapacity
- § 10:3 — —Incapacity due to alcohol or drugs
- § 10:4 — —Mental deformity
- § 10:5 —Force, fraud, and duress
- § 10:6 —Physical incapacity
- § 10:7 —Prohibited marriage
- § 10:8 —Statute of limitations
- § 10:9 —Time period for seeking—Chart
- § 10:10 —Standing
- § 10:11 —Property rights and support obligations
- § 10:12 — —Subsequent marriage
- § 10:13 Annulment petition—Form
- § 10:14 Annulment decree—Form

CHAPTER 11. DIVORCE FROM BED AND BOARD

- § 11:1 Divorce from bed and board—Terminates marriage; does not permit remarriage

TABLE OF CONTENTS

- § 11:2 —Jurisdiction
- § 11:3 —Statutory grounds
- § 11:4 —Effect on marital status
- § 11:5 —Effect on dower, curtesy, and distributive rights
- § 11:6 —Effect on marital property rights
- § 11:7 —Maintenance
- § 11:8 —Actions to set aside

CHAPTER 12. ANNULMENT OF DIVORCE

- § 12:1 Annulment of divorce—Consensual action
- § 12:2 —Statutory authority
- § 12:3 —Not by mere cohabitation
- § 12:4 —Effect
- § 12:5 Motion for annulment of divorce—Form
- § 12:6 Order for annulment of divorce—Form

CHAPTER 13. APPEALS

- § 13:1 Appeals—Appealable orders
- § 13:2 —Standing
- § 13:3 —Preserving objections to evidence
- § 13:4 —Court’s duty to make findings of fact
- § 13:5 —Clear error standard of review requires findings of fact
- § 13:6 —Failure to request findings of fact may waive error; exceptions
- § 13:7 —Motion to amend or clarify judgment
- § 13:8 —Harmless error and substantial error
- § 13:9 —Filing notice of appeal
- § 13:10 —Stay
- § 13:11 —Certification of record
- § 13:12 —Designation record
- § 13:13 —Designation of record by agreed statement
- § 13:14 —Designation of record by stipulation under CR 75.06
- § 13:15 —Designation of record under CR 75.01
- § 13:16 —Perfection and cross appeals
- § 13:17 —Prehearing conference
- § 13:18 —Requirements for briefs
- § 13:19 —Oral argument
- § 13:20 —Standard of review
- § 13:21 —Discretionary review by Kentucky Supreme Court
- § 13:22 —Effect on trial court’s power
- § 13:23 —Postjudgment relief
- § 13:24 —Subsequent appeals

A. NOTICE AND RECORD—FORMS

- § 13:25 Notice of appeal from order of circuit court—Form
- § 13:26 Designation of entire hearing record for inclusion in appeal record—Form
- § 13:27 Designation of partial hearing record for inclusion in appeal record—Form
- § 13:28 Certificate verifying preparation of transcript under CR 75.01(2)—Form
- § 13:29 Statement of appeal—Form

B. RESPONSE TO APPEAL—FORMS

- § 13:30 Motion to dismiss appeal—Form
- § 13:31 Notice of cross-appeal—Form

CHAPTER 14. JURISDICTIONAL ISSUES

- § 14:1 Jurisdiction—Constitutional controls
- § 14:2 —Ex parte divorce
- § 14:3 —Divisible divorce
- § 14:4 —Modern trends—Impact of *Shaffer v. Heitner*
- § 14:5 —Bilateral divorce
- § 14:6 —Over temporarily present parties
- § 14:7 —Tactical Observations
- § 14:8 —Child support
- § 14:9 —Exception to diversity jurisdiction
- § 14:10 —Statutory requirements
- § 14:11 —Actual residency requirement
- § 14:12 —Legal residence—Power to grant divorce to temporarily absent domiciliary
- § 14:13 —Defining temporary absence

A. MILITARY PERSONNEL

- § 14:14 Jurisdiction—Military personnel—State law requirements
- § 14:15 — —Federal requirements—The Servicemembers Civil Relief Act of 2003
- § 14:16 — — —The role of the USFSPA

B. REAL PROPERTY OUTSIDE KENTUCKY

- § 14:17 Jurisdiction—To divide real property located outside Kentucky

C. LONG-ARM JURISDICTION

- § 14:18 Jurisdiction—Long-arm jurisdiction—General observations

TABLE OF CONTENTS

- § 14:19 — —To divide marital property
- § 14:20 — —To award maintenance
- § 14:21 —KRS 454.165 prevents entry of personal judgment based on constructive service

D. CHILD CUSTODY

- § 14:22 Jurisdiction—Child custody—Introduction
- § 14:23 — —Long-arm jurisdiction
- § 14:24 —Subject matter jurisdiction—UCCJEA
- § 14:25 —Relationship between UCCJEA and PKPA
- § 14:26 —UCCJEA—Home state as ground
- § 14:27 —Significant connection to forum and substantial evidence in forum
- § 14:28 —UCCJEA—No other more appropriate forum
- § 14:29 —Jurisdiction by necessity
- § 14:30 —Emergency
- § 14:31 —UCCJEA—Clean hands
- § 14:32 —Modification of custody decrees
- § 14:33 —Interstate communication between courts
- § 14:34 —Enforcement under UCCJEA
- § 14:35 —Parental Kidnapping Prevention Act of 1980
- § 14:36 —PKPA—No federal jurisdiction over custody
- § 14:37 —Federal diversity—Tort claims based on interference with custody rights
- § 14:38 —PKPA—Impact on initial custody litigation
- § 14:39 — —State enforcement of decrees
- § 14:40 — —Hierarchy
- § 14:41 — —Restricted use of significant connection
- § 14:42 — —Emergency
- § 14:43 — —Continuing jurisdiction
- § 14:44 — — —Federal requirements
- § 14:45 — —Continuing jurisdiction sister state claims as bar to modification
- § 14:46 —Continuing jurisdiction
- § 14:47 —UCCJEA—International custody disputes
- § 14:48 —International custody disputes—Hague Convention, ICARA, and remedy of return

E. CHILD SUPPORT

- § 14:49 Jurisdiction—Child support obligations
- § 14:50 —Child support obligors and long-arm jurisdiction—General theory

DOMESTIC RELATIONS LAW

- § 14:51 —UIFSA—Long-arm provisions
- § 14:52 —Long-arm jurisdiction—Under KRS 454.220
- § 14:53 — —Under KRS 454.275
- § 14:54 —Kentucky’s Uniform Interstate Family Support Act—Introduction
- § 14:55 —UIFSA—Single state proceedings
- § 14:56 — —Continuing, exclusive jurisdiction
- § 14:57 —Proceedings involving more than one state
- § 14:58 —Simultaneous proceedings in two states
- § 14:59 —UIFSA—Duties of initiating state
- § 14:60 — —Duties of responding state
- § 14:61 — —Priority between multiple orders
- § 14:62 — —Registration and enforcement of support orders
- § 14:63 — —Application to spousal support
- § 14:64 —To determine paternity
- § 14:65 —Defenses to improper assertion—Prior judgment of sister state
- § 14:66 —UIFSA—Choice of law
- § 14:67 — —Statutes of limitation
- § 14:68 —Full faith and credit for sister state child support orders—New federal requirements under 28 U.S.C.A. § 1738B
- § 14:69 —Comity for international support orders

F. CHALLENGING JURISDICTION

- § 14:70 Jurisdiction—Challenging

G. NOTICE

- § 14:71 Jurisdiction—Notice requirements for marriage dissolution—Constitutional
- § 14:72 — —Statutory
- § 14:73 —Notice requirements in custody actions—Statutory

H. SERVICE

- § 14:74 Jurisdiction—Warning orders
- § 14:75 —Service by certified mail

I. VENUE

- § 14:76 Jurisdiction—Venue requirements—Divorce
- § 14:77 — —Custody
- § 14:78 — —Child support

TABLE OF CONTENTS

§ 14:79 —To grant legal separation

J. OTHER ACTIONS

§ 14:80 Jurisdiction—To annul marriage

§ 14:81 —To grant bed and board divorce

CHAPTER 15. INTRODUCTION TO CLASSIFICATION AND DIVISION OF PROPERTY AT DIVORCE

§ 15:1 Property division—Process

§ 15:2 —Threshold question: Is asset property?

§ 15:3 —Statutory policy

§ 15:4 —Court discretion

A. BASIC RULES FOR CLASSIFICATION OF PROPERTY AS MARITAL OR NONMARITAL

§ 15:5 Property division—Marital property rule

§ 15:6 —Statutory exceptions

§ 15:7 —Income from nonmarital property

B. PARTICULAR PROBLEMS RELATED TO CLASSIFICATION

§ 15:8 Property division—Timing problems—Meaning of “during marriage”

§ 15:9 —Relevance of joint efforts

§ 15:10 —Specific asset rule—Effect

§ 15:11 —Criticism

§ 15:12 —Justifications

§ 15:13 —Permissible methods of tracing

§ 15:14 —Unanswered questions—Role of transmutation and family use

C. PROBLEMS WITH PARTICULAR ASSETS

§ 15:15 Property division—Gifts and inheritances—Purpose of rule

§ 15:16 —Extension of gift theory to nonfamily assets—Veterans Administration benefits

§ 15:17 —Gifts from third parties to spouse

§ 15:18 —Gifts between parties to marriage

§ 15:19 —Gifts made by spouses to third parties

§ 15:20 —Pension benefits—General importance

DOMESTIC RELATIONS LAW

- § 15:21 — —Types of benefits subject to division in Kentucky
- § 15:22 — —Types of distributions permitted
- § 15:23 — —Employee entitlement governed by plan terms
- § 15:24 — —Types of plans available under ERISA
- § 15:25 — —Importance of employment history
- § 15:26 — —Employee salary history relevant to valuation
- § 15:27 — —Pension benefits—Other relevant information
- § 15:28 — —Permissible methods for calculating divisible marital benefits in defined contribution plans
- § 15:29 — —Pension benefits—Methods for calculating marital share of assets in defined benefit plan
- § 15:30 — —Present offset awards—Calculating benefit's present value
- § 15:31 — —Deferred distribution
- § 15:32 — —Impact of federal law
- § 15:33 — —Qualified domestic relations order—General requirements
- § 15:34 — —Amounts, percentages, and manner of calculation
- § 15:35 — —Selecting option for payment under plan
- § 15:36 — —Early retirement benefits
- § 15:37 — —Joint and survivor annuities
- § 15:38 — —State law limitations on divisibility
- § 15:39 — —Continuation of health insurance
- § 15:40 — —Military pension benefits—Federal USFSPA
- § 15:41 — —Division of military benefits under Kentucky law
- § 15:42 — —Federal limits on jurisdiction to divide pension benefits
- § 15:43 — —Only disposable retired pay may be divided
- § 15:44 — —Federal limitations on enforcement
- § 15:45 — —Miscellaneous problems with military benefits
- § 15:46 — —Nonmilitary federal retirement systems—Civil service benefits generally
- § 15:47 — —Division of civil service benefits at divorce
- § 15:48 — —Dividing lump sum distributions of civil service benefits
- § 15:49 — —Civil service survivor annuities
- § 15:50 — —Foreign service retirement benefits
- § 15:51 — —Railroad retirement benefits
- § 15:52 — —Social security benefits
- § 15:53 — —Disability retirement benefits
- § 15:54 — —Workers' compensation awards
- § 15:55 — —Personal injury awards
- § 15:56 — —Accrued sick leave and vacation benefits
- § 15:57 — —Insurance benefits
- § 15:58 — —Advanced degrees and professional licenses

TABLE OF CONTENTS

§ 15:59	—Compensating nondegree holders
§ 15:60	—Compensation based on equitable principles
§ 15:61	—Compensation based on property rationales
§ 15:62	—Future of compensatory awards
§ 15:63	—Appreciated real property
§ 15:64	—Source of funds rule
§ 15:65	—Comparison of <i>Brandenburg</i> and other formulas
§ 15:66	— <i>Brandenburg</i> formula—Unfair leveraging or shared venture?
§ 15:67	—Homemaker spouse contributions
§ 15:68	— <i>Brandenburg</i> not mandatory formula
§ 15:69	— <i>Brandenburg</i> formula—Impact of amendments to KRS 403.190 on gifts and inheritances
§ 15:70	—Refining <i>Brandenburg</i> formula
§ 15:71	—Business assets generally
§ 15:72	—Necessity for business valuation
§ 15:73	—Valuation of corporate interests
§ 15:74	—Valuation of closely held corporation
§ 15:75	—Emphasis on earning capacity of corporation
§ 15:76	—Impact of buy-sell agreements
§ 15:77	—Other factors in valuation
§ 15:78	—Information needed for accurate valuation—Use of corporate records
§ 15:79	—Valuation of partnerships
§ 15:80	—Impact of partnership agreements on valuation
§ 15:81	—Partnership interests acquired as tax shelters
§ 15:82	—Discovery problems
§ 15:83	—Business goodwill
§ 15:84	—Accounts receivable
§ 15:85	—Increase in value of nonmarital business
§ 15:86	—Stock dividends, stock splits, and retained corporate earnings
§ 15:87	—Stock options
§ 15:88	—Trusts
§ 15:89	—Marital debts and dissipation of marital assets
§ 15:90	—Factors in making equitable division
§ 15:91	—Just division not necessarily equal division
§ 15:92	—Marital misconduct
§ 15:93	—Monetary contribution to property acquisition
§ 15:94	—Homemaker spouse contributions and other nonmonetary contributions
§ 15:95	—Length of marriage
§ 15:96	—Value of nonmarital property

- § 15:97 —Economic circumstances of parties
§ 15:98 —Other factors

D. PROPERTY DIVISION—FORMS

- § 15:99 Divorce deed—Form
§ 15:100 Vendor's lien divorce deed—Form
§ 15:101 Vendor's lien note secured by divorce deed—Form
§ 15:102 Marital property and status affidavit—Form
§ 15:103 Stipulation of appraised realty value—Form
§ 15:104 Stipulation of personalty value and division—Form
§ 15:105 Stipulation of accounts—Form
§ 15:106 Stipulation of nonmarital property—Form
§ 15:107 Schedule of marital assets—Form

Table of Laws and Rules

Table of Cases

Table of Contents

CHAPTER 16. MAINTENANCE

§ 16:1	Maintenance—Jurisdictional concerns
§ 16:2	—Rehabilitative contrasted with alimony
§ 16:3	—Award may not be considered until property division effected
§ 16:4	—Burden of proof
§ 16:5	—Statutory standard for awarding
§ 16:6	—Defining sufficient property under KRS 403.200
§ 16:7	—Defining reasonable needs under KRS 403.200
§ 16:8	—Requirement for self-support through appropriate employment
§ 16:9	—Effect of child custody
§ 16:10	—Role of fault
§ 16:11	—Factors in determining amount
§ 16:12	—Financial resources of proposed recipient
§ 16:13	—Time needed to acquire education and training
§ 16:14	—Standard of living during marriage
§ 16:15	—Marriage duration
§ 16:16	—Age, physical condition, and emotion condition of proposed recipient
§ 16:17	—Obligor’s ability to meet own needs as well as those of recipient
§ 16:18	—Other factors
§ 16:19	—Modification of awards: Preconditions
§ 16:20	—Agreements barring modification
§ 16:21	—Special rule barring modification of lump sum awards
§ 16:22	—Right to live in marital home as award
§ 16:23	—Effect of obligor’s death
§ 16:24	—Effect of remarriage and cohabitation
§ 16:25	—Effect of changed circumstances
§ 16:26	—Proposed guidelines
§ 16:27	Motion for temporary maintenance—Form
§ 16:28	Maintenance affidavit—Form
§ 16:29	Response to motion for temporary maintenance—Form
§ 16:30	Affidavit in support of response to motion for temporary maintenance—Form
§ 16:31	Motion for modification of maintenance—Form
§ 16:32	Affidavit—Form
§ 16:33	Motion to terminate maintenance—Form

CHAPTER 17. ENFORCEMENT OF PROPERTY AND SUPPORT AWARDS

- § 17:1 Enforcement—Pre-judgment remedies to prevent property dissipation
- § 17:2 —Postjudgment remedies
- § 17:3 —Final judgment requirement
- § 17:4 —Nonmodifiable judgment
- § 17:5 —Reopening a judgment under CR 60.02
- § 17:6 — —Mistake, inadvertence, surprise, or excusable neglect
- § 17:7 — —Newly discovered evidence
- § 17:8 — —Perjury, falsified evidence, or other types of fraud
- § 17:9 — —Void, satisfied, released, or discharged judgments
- § 17:10 —Other grounds justifying extraordinary relief
- § 17:11 —Default judgments
- § 17:12 —Writ of execution
- § 17:13 —Sales of personal property subject to execution
- § 17:14 —Sale of real property subject to a writ of execution
- § 17:15 —Actions for recovery of specific personal property
- § 17:16 —Discovery of property for purposes of execution
- § 17:17 —Problems with other creditors
- § 17:18 —Garnishment
- § 17:19 —Exemptions
- § 17:20 —Interest on judgments
- § 17:21 —Prejudgment interest on marital property awards
- § 17:22 —Statutes of limitations
- § 17:23 —Sister state judgments
- § 17:24 —Maintenance
- § 17:25 — —Securing
- § 17:26 — —Writs of execution and garnishment
- § 17:27 — —Use of contempt sanction
- § 17:28 — —Enforcing obligation against estate
- § 17:29 — —Overpayment
- § 17:30 —Restitution of amounts paid under judgment later overturned
- § 17:31 —Revival of actions
- § 17:32 —Child support—General rules
- § 17:33 — —Parent locator service
- § 17:34 — —Wage assignments
- § 17:35 — —Use of liens
- § 17:36 — —Denial, suspension, or revocation of licenses
- § 17:37 — —Reports to credit reporting agencies
- § 17:38 — —Use of writs of execution

TABLE OF CONTENTS

§ 17:39	—Garnishment
§ 17:40	—Administrative freeze of bank accounts
§ 17:41	—Mandatory enrollment in health care plans
§ 17:42	—Contempt
§ 17:43	—Statutes of limitations
§ 17:44	—Administrative process
§ 17:45	—Determination
§ 17:46	—Attorney representation
§ 17:47	—Procedure
§ 17:48	—Wage withholding
§ 17:49	—Orders to withhold and deliver property
§ 17:50	—Defense of payment
§ 17:51	—UIFSA
§ 17:52	—Criminal provisions—State
§ 17:53	—Federal

CHAPTER 18. BANKRUPTCY

§ 18:1	Bankruptcy—Effect
§ 18:2	—Grounds for dismissal
§ 18:3	—The automatic stay
§ 18:4	—Property of estate
§ 18:5	—Discharge
§ 18:6	—Lien avoidance
§ 18:7	—Priorities

CHAPTER 19. ATTORNEY FEES

§ 19:1	Attorney fees—Statutory authority to award
§ 19:2	—Factors considered in awarding
§ 19:3	—Court’s discretion in awarding
§ 19:4	—Proof of value of services
§ 19:5	—Collection
§ 19:6	—Costs of litigation
§ 19:7	—Enforcement of attorney fee awards
§ 19:8	—Interest payment on judgment or awards
§ 19:9	Motion for attorney fees—Form
§ 19:10	Affidavit in support of motion for attorney fees—Form
§ 19:11	Affidavit documenting attorney fees—Form
§ 19:12	Affidavit in support of motion for rule of contempt for violating order compelling payment of fees—Form

CHAPTER 20. TAX IMPLICATIONS OF DIVORCE

§ 20:1	Tax implications—Rules require specialized knowledge
--------	--

- § 20:2 —Filing status affected by divorce
- § 20:3 —Head of household status
- § 20:4 —Transfers of property incident to divorce
- § 20:5 —Other rules affecting gain or loss on transfers incident to divorce
- § 20:6 —Marital property distribution
- § 20:7 —Maintenance payments
- § 20:8 —Child support
- § 20:9 —Exemption for dependent children

CHAPTER 21. CHILD CUSTODY

- § 21:1 Child custody—Petition
- § 21:2 — —Temporary orders
- § 21:3 — —Contents
- § 21:4 —Hearings—Notice
- § 21:5 —Substantive criteria for determinations
- § 21:6 —Best interest
- § 21:7 — —Trial court's role in determining
- § 21:8 —Best interest and psychological perspective
- § 21:9 —Best interest—Kentucky courts
- § 21:10 — —Statutory factors
- § 21:11 —Equal consideration of each parent
- § 21:12 —Parental wishes
- § 21:13 —Child's wishes
- § 21:14 —Child's interaction with family and significant others
- § 21:15 —Child's adjustment to home, school, and community
- § 21:16 —Mental and physical health of all parties
- § 21:17 —Parental misconduct
- § 21:18 —Domestic violence
- § 21:19 —Other factors—Race not permissible consideration
- § 21:20 — —Economic opportunity
- § 21:21 — —Educational opportunity
- § 21:22 — —Homosexual parents
- § 21:23 — —Religion
- § 21:24 — —Relocation
- § 21:25 —Military parents
- § 21:26 —Unwed father's custody rights
- § 21:27 —Third-party custody
- § 21:28 —Impact of agreement or waiver on third-party custody
- § 21:29 —De facto custodians
- § 21:30 —Joint custody—Based on agreement between parties
- § 21:31 — —Court-ordered

TABLE OF CONTENTS

- § 21:32 —Recent legislative amendment of rules governing
modification of child custody
- § 21:33 —Naming children
- § 21:34 Motion for custodial evaluation—Form
- § 21:35 Order for custodial evaluation—Form
- § 21:36 Custody interrogatories—Form
- § 21:37 Motion for hearing to modify previous custody
decree—Form

CHAPTER 22. VISITATION

- § 22:1 Visitation—Renaming
- § 22:2 —Persons entitled
- § 22:3 —General standard for awarding
- § 22:4 —Standards for awarding—Grandparent
- § 22:5 —Orders
- § 22:6 —Grounds for limiting
- § 22:7 —Enforcing rights
- § 22:8 —Modification
- § 22:9 Suggested visitation order—Form
- § 22:10 Motion to modify visitation—Form
- § 22:11 Motion to modify visitation to permit removal of child from
jurisdiction—Form
- § 22:12 Affidavit in support of motion to modify visitation to
permit removal of child from jurisdiction—Form
- § 22:13 Motion to prohibit removal of minor child from
jurisdiction—Form

CHAPTER 23. PATERNITY

- § 23:1 Paternity—Right to bring action
- § 23:2 —No right to trial by jury
- § 23:3 —Support, custody, and visitation
- § 23:4 —Voluntary establishment
- § 23:5 —Presumption of legitimacy
- § 23:6 —Disproving and best interest of child
- § 23:7 —Genetic testing—Statutory requirements
- § 23:8 — —Statutory presumptions
- § 23:9 — —DNA and scientific reliability
- § 23:10 — —DNA testing procedure
- § 23:11 — —DNA testing results interpretation
- § 23:12 — —HLA testing
- § 23:13 — —Constitutionality
- § 23:14 —Other evidentiary issues

- § 23:15 —Defenses
- § 23:16 — —Statutes of limitation
- § 23:17 —Use of CR 60
- § 23:18 —Res judicata effect of prior judgment
- § 23:19 —Civil actions for fraudulent misrepresentation of
paternity
- § 23:20 —Paternity by estoppel
- § 23:21 —Waiver of right to claim paternity
- § 23:22 —Inheritance rights
- § 23:23 Paternity judgment—Form

CHAPTER 24. CHILD SUPPORT

- § 24:1 Child support—Introduction
- § 24:2 —Duty to provide
- § 24:3 —Denial of visitation or concealment of children
- § 24:4 —Emancipation
- § 24:5 — —Attaining age of majority
- § 24:6 — —Marriage, military service, or self-support
- § 24:7 — —Constructive
- § 24:8 — —Choice of law
- § 24:9 — —Exceptions—Children who remain in high school
beyond their eighteenth birthday
- § 24:10 — — —Child’s disability
- § 24:11 — — —Contractual agreements for post-majority support
- § 24:12 —Obligations may be enforced against obligor’s estate
- § 24:13 —Child’s receipt of social security or other benefits
- § 24:14 —Insure payment through obligor’s purchase of life
insurance
- § 24:15 —Guidelines—Origin and theory
- § 24:16 — —Application in variety of proceedings
- § 24:17 — —Setting temporary support
- § 24:18 — —Exceptions—Defaulting parents and insufficient
evidence
- § 24:19 — —Gross income of both parents used to calculate
- § 24:20 — —Gross income—Title IV-A benefits and SSI excepted
- § 24:21 — —Gross income determination for self-employed obligors
- § 24:22 — —Gross income—Deductions
- § 24:23 — — —Health care and QMCSOs
- § 24:24 — — —Maintenance obligations
- § 24:25 — — —Payments under pre-existing child support order
and for support of “prior born children”
- § 24:26 — — —Child care costs
- § 24:27 — — —Voluntarily underemployed or unemployed obligors

TABLE OF CONTENTS

- § 24:28 — — —Verification
- § 24:29 — —Extended visitation and joint custody
- § 24:30 —Split custody
- § 24:31 —Guidelines—High income families
- § 24:32 — —Deviation
- § 24:33 —Modification
- § 24:34 — —Right to tax exemption for dependents may be lost by delinquent obligor
- § 24:35 — —Oral
- § 24:36 —Problem of multi-child orders; obligors must move for modification upon emancipation of individual children
- § 24:37 —Overpayment
- § 24:38 —Recoupment
- § 24:39 —Propriety of setting off child support obligations against other entitlements arising from divorce
- § 24:40 —Impact of parent's non-support on wrongful death actions—Mandy Jo's law

A. ORDER AND ASSIGNMENT OF WAGES—FORMS

- § 24:41 Order of child support—Form
- § 24:42 Motion for assignment of wages for child support—Form
- § 24:43 Affidavit in support of motion for assignment of wages for child support—Form
- § 24:44 Order of assignment of wages for child support—Form
- § 24:45 Order of child support wage assignment—Form
- § 24:46 Motion for qualified medical child support order—Form
- § 24:47 Order granting qualified medical child support order—Form
- § 24:48 Worksheet for monthly child support obligation—Form

B. INCREASE OF CHILD SUPPORT—FORMS

- § 24:49 Motion to increase child support—Form
- § 24:50 Affidavit in support of motion to increase child support—Form
- § 24:51 Affidavit in support of motion to increase child support due to affiant's unemployment and obligor's breach of property settlement agreement—Form

C. CONTEMPT—FORMS

- § 24:52 Motion for rule of contempt for violating order requiring maintenance and/or support—Form

- § 24:53 Affidavit in support of motion for rule of contempt for violating order requiring maintenance and/or support—Form
- § 24:54 Order for contempt due to child support arrearages—Form
- § 24:55 Order for arrest due to contempt—Form

D. SUSPENSION OF CHILD SUPPORT—FORMS

- § 24:56 Motion for rule to suspend child support—Form
- § 24:57 Affidavit in support of motion to suspend child support for denial of visitation—Form

CHAPTER 25. TERMINATION OF PARENTAL RIGHTS

- § 25:1 Termination of parental rights—Jurisdiction

A. VOLUNTARY TERMINATION

- § 25:2 Voluntary termination of parental rights
- § 25:3 —Venue
- § 25:4 —Contents of petition
- § 25:5 —Parties
- § 25:6 —Legal representation
- § 25:7 —Hearing
- § 25:8 —Grounds
- § 25:9 —Orders and their effect
- § 25:10 —Confidentiality

B. INVOLUNTARY TERMINATION

- § 25:11 Involuntary termination of parental rights—Who may initiate action
- § 25:12 —Venue
- § 25:13 —Contents of petition
- § 25:14 —Parties
- § 25:15 —Putative fathers
- § 25:16 —Service of process
- § 25:17 —Waiver of service of process
- § 25:18 —Conduct of hearings
- § 25:19 —Legal representation
- § 25:20 —Findings of neglect or abuse
- § 25:21 —Grounds
- § 25:22 —Abandonment of child by parent
- § 25:23 —Infliction of serious physical injury on child by other than accidental means

TABLE OF CONTENTS

- § 25:24 —Continuous or repeated infliction of physical injury or emotional harm
- § 25:25 —Failure to provide essential parental care and protection
- § 25:26 —Sexual abuse or exploitation of child
- § 25:27 —Failure to provide essential food, clothing, and shelter
- § 25:28 —New grounds for termination of parental rights
- § 25:29 —Burden of proof
- § 25:30 —Role of other statutory factors
- § 25:31 —Reasonable efforts by Cabinet for Health and Family Services
- § 25:32 —Evidentiary issues
- § 25:33 —Orders
- § 25:34 —Kinship care and visitation
- § 25:35 —Confidentiality
- § 25:36 —Appeals

C. TERMINATION OF PARENTAL RIGHTS— FORMS

- § 25:37 Order of discharge from CFC/DJJ commitment—Form
- § 25:38 Order for fees in termination of parental rights—Form
- § 25:39 Petition for voluntary termination of parental rights—Form
- § 25:40 Voluntary termination of parental rights—Findings of fact and conclusions of law—Form
- § 25:41 —Order—Form
- § 25:42 Guardian ad litem—Order—Form

CHAPTER 26. ADOPTION

- § 26:1 Adoption—State regulation
- § 26:2 —Who may adopt and be adopted
- § 26:3 —Necessary parties
- § 26:4 —Service of process
- § 26:5 —Petition contents
- § 26:6 —Petition—Timing
- § 26:7 —Consent
- § 26:8 —Post-petition investigation
- § 26:9 —Hearing and notice
- § 26:10 —Judgment
- § 26:11 —One-year limitation period for setting aside or revoking adoption
- § 26:12 —Annulment
- § 26:13 —Birth certificate

DOMESTIC RELATIONS LAW

- § 26:14 —Inspection of records
- § 26:15 Adoption petition (agency adoption)—Form
- § 26:16 Application for permission to receive or place child—Form
- § 26:17 Consent to adoption and entry of appearance—Form
- § 26:18 Judgment of adoption—Form
- § 26:19 Petition to inspect adoption records—Form
- § 26:20 Order granting request to inspection requiring CHR to
notify biological parents—Form
- § 26:21 Order granting or denying request to inspect adoption
records—Form

Table of Laws and Rules

Table of Cases

Index