# CHAPTER 1. HISTORY OF DIVORCE AND ALIMONY

- § 1:1 History of divorce proceedings
- § 1:2 History of divorce in Mississippi

# CHAPTER 2. INVALID MARRIAGES AND ANNULMENT

- § 2:1 Generally
- § 2:2 Essentials of valid marriage
- § 2:3 —Conflicts of law
- § 2:4 —Evidential presumptions
- § 2:5 Consequences of invalid marriage
- § 2:6 Annulment
- § 2:7 Grounds for annulment
- § 2:8 Procedure for annulment
- § 2:9 Consequences of annulment

# CHAPTER 3. SEPARATION OF PARTIES TO MARRIAGES

- § 3:1 Generally
- § 3:2 Nature of separation
- § 3:3 Obligation of spouse
- § 3:4 —Evidentiary presumptions
- § 3:5 Right of parties to protect person and property
- § 3:6 Other legal consequences of separation
- § 3:7 Separation agreement
- § 3:8 Separate maintenance
- § 3:9 —Jurisdiction, residence, and venue
- § 3:10 —Equitable relief
- § 3:11 —Amount of support and expenses of litigation
- § 3:12 —Child support and custody
- § 3:13 —Orders, decrees, and judgments
- § 3:14 —Impact on marital property
- § 3:15 Cohabitation or efforts to reconcile, effect of

### CHAPTER 4. GROUNDS FOR DIVORCE

- § 4:1 In general
- § 4:2 Natural impotency at time of marriage
- § 4:3 Insanity or idiocy at time of marriage
- § 4:4 Bigamy at time of purported marriage
- § 4:5 Pregnancy of the wife by another person at time of marriage

| § 4:6  | Incest at time of marriage                                  |
|--------|---|
| § 4:7  | Adultery (arises after entry into marriage)                 |
| § 4:8  | Sentenced to penitentiary                                   |
| § 4:9  | Desertion   |
| § 4:10 | Habitual drunkenness  |
| § 4:11 | Habitual drug usage   |
| § 4:12 | Habitual cruel and inhuman treatment                        |
| § 4:13 | Incurable insanity  |
| § 4:14 | Irreconcilable differences                                  |
| § 4:15 | —Court participation in property division and other matters |
| § 4:16 | Evidence  |

## **CHAPTER 5. DEFENSES**

| § 5:1  | In general                                     |
|--------|--|
| § 5:2  | No defense required                            |
| § 5:3  | Motion to dismiss for failure to state a claim |
| § 5:4  | Denial by answer                               |
| § 5:5  | Collusion                                      |
| § 5:6  | Consent and connivance                         |
| § 5:7  | Condonation and ratification                   |
| § 5:8  | Recrimination as a defense                     |
| § 5:9  | Recrimination in nature of a counterclaim      |
| § 5:10 | Provocation by plaintiff                       |
| § 5:11 | Reformation                                    |
| § 5:12 | Lack of capacity                               |
| § 5:13 | Antenuptial knowledge                          |
| § 5:14 | Waiver and ratification                        |
| § 5:15 | Lack of jurisdiction                           |
| § 5:16 | Res judicata                                   |
| § 5:17 | Failure to separate                            |

§ 5:18 Soldiers' and Sailors' Civil Relief Act

### CHAPTER 6. JURISDICTION AND VENUE

| O     | TILLO OF COLUMN TO THE TERMS OF                      |
|-------|--|
| § 6:1 | Generally  |
| § 6:2 | Courts having jurisdiction                           |
| § 6:3 | Jurisdiction over the subject matter: Valid marriage |
| § 6:4 | —Six months residence                                |
| § 6:5 | Jurisdiction over the parties                        |
| § 6:6 | Venue  |
| § 6:7 | Residence and domicile                               |
| § 6:8 | Retention of jurisdiction                            |
|       |  |

## CHAPTER 7. PLEADINGS AND PROCEDURE

| § 7:1 | Parties                         |
|-------|---------------------------------|
| § 7:2 | Applicability of discovery rule |
| § 7:3 | Complaint for divorce           |
| § 7:4 | Service of process              |
| § 7:5 | Responsive pleadings            |
|       |                                 |

- § 7:6 Default
- § 7:7 Voluntary dismissal
- § 7:8 Consolidation and abatement
- § 7:9 Discovery
- § 7:10 Judgment on the pleadings
- § 7:11 The appearance term
- § 7:12 Trial by jury
- § 7:13 Jury demand
- § 7:14 Jury selection
- § 7:15 Effect of cohabitation
- § 7:16 Costs
- § 7:17 Automatic dismissal
- § 7:18 Equitable relief; ne exeat

## CHAPTER 8. TEMPORARY ALIMONY AND TEMPORARY CHILD SUPPORT

- § 8:1 Generally
- § 8:2 Nature and purpose
- § 8:3 Form of award
- § 8:4 Requirements of claim
- § 8:5 Criteria for determining amount
- § 8:6 Attorney's fees: Nature and purpose
- § 8:7 —When awarded
- § 8:8 —How enforced
- § 8:9 Discretion of trial judge
- § 8:10 Defenses against temporary relief
- § 8:11 Agreement
- § 8:12 Modification
- § 8:13 Duration of temporary orders
- § 8:14 Enforcement
- § 8:15 Effect of award
- § 8:16 Appeal from temporary orders

## CHAPTER 9. TRIAL, VERDICT, AND ORDER

- § 9:1 Generally
- § 9:2 Judge or jury
- § 9:3 Issues to be tried
- § 9:4 Evidence
- § 9:5 Verdict or order
- § 9:6 —Disabilities
- § 9:7 —Restoration of wife's previous name
- § 9:8 —Requirement of reasonableness
- § 9:9 —Modification
- § 9:10 —Agreement
- § 9:11 —Certainty
- § 9:12 —Findings by trial judge
- § 9:13 —Effect of
- § 9:14 ——Legitimacy of children

| § 9:15 | — —Alimony                                |
|--------|---|
| § 9:16 | — —Disability of remarriage               |
| § 9:17 | ——Actions for damages between spouses     |
| § 9:18 | ——Rights in property                      |
| § 9:19 | — —Child support                          |
| § 9:20 | — —Temporary orders of alimony or support |
| § 9:21 | — —Res judicata                           |
| § 9:22 | — —Inheritance rights                     |
| § 9:23 | ——Separation agreements                   |
| § 9:24 | —Revocation                               |

### CHAPTER 10. PERMANENT ALIMONY

- § 10:1 Types, nature, and purpose of permanent alimony
- § 10:2 General requirement of a claim
- § 10:3 Rights of spouse
- § 10:4 Criteria in determining amount
- § 10:5 Time, manner, and form of payment
- § 10:6 Agreements and consent decrees
- § 10:7 Remarriage or subsequent cohabitation of recipient spouse
- § 10:8 Death of the parties
- § 10:9 Proration between spouse and minor children
- § 10:10 Enforcement

### CHAPTER 11. PERMANENT CHILD SUPPORT

- § 11:1 Nature and purpose
- § 11:2 General requirements of claim
- § 11:3 Rights of claiming spouse and minor children
- § 11:4 Criteria in determining amount
- § 11:5 Time, manner, and form of payment
- § 11:6 Spouse or custodian as trustee
- § 11:7 Agreements and settlements
- § 11:8 Duration
- § 11:9 Enforcement

#### CHAPTER 12. CUSTODY OF CHILDREN

- § 12:1 General considerations
- § 12:2 Best interests of child; Albright factors
- § 12:3 Preference of child
- § 12:4 Multiple children; separating siblings
- § 12:5 Domicile restrictions
- § 12:6 Custody in a divorce action
- § 12:7 Custody in separate maintenance action
- § 12:8 Habeas corpus proceeding for custody
- § 12:9 Change of custody
- § 12:10 Basic custody and support proceeding
- § 12:11 Appointment of guardians of the person and guardians ad litem
- § 12:12 Interference with custody

| § 12:13 | —National and international law; Uniform Child Custody    |
|---------|---|
| 8 12.10 | Jurisdiction and Enforcement Act (UCCJEA)                 |
|         |   |
| § 12:14 | Temporary custody   |
| § 12:15 | —Discretion of court                                      |
| § 12:16 | —Jurisdiction and procedure                               |
| § 12:17 | —Power of attorney for temporary care or custody of child |
| § 12:18 | Rights to child—Between parents                           |
| § 12:19 | ——Discretion of court                                     |
| § 12:20 | ——Remarriage to each other                                |
| § 12:21 | —Child born out of wedlock                                |
| § 12:22 | —Death of custodial parent                                |
| § 12:23 | —Between parent and third party                           |
| § 12:24 | —Between third parties                                    |
| § 12:25 | Visitation  |

### **CHAPTER 13. DIVISION OF PROPERTY**

§ 13:1 Generally

§ 12:26

- § 13:2 Marital property
- § 13:3 Non-marital property
- § 13:4 Rules of equitable division (guidelines)

Visitation by grandparents

- § 13:5 Allocation of use of property and related matters
- § 13:6 Pensions and related assets

# CHAPTER 14. POST-JUDGMENT REVIEW AND RELIEF

- § 14:1 Direct attack: Generally
- § 14:2 Damages and fees on appeal

# CHAPTER 15. ENFORCEMENT OF COURT ORDERS; CONTEMPT

| § 15:1  | Contempt—Nature and purpose of remedy         |
|---------|---|
| § 15:2  | -Requirements of claim and burden of proof    |
| § 15:3  | —Jurisdiction, pleading, and procedure        |
| § 15:4  | —Defenses                                     |
| § 15:5  | —Purging                                      |
| § 15:6  | —Sanctions                                    |
| § 15:7  | —Attorney's fees and expenses of litigation   |
| § 15:8  | Withholding orders                            |
| § 15:9  | Child support enforcement: license suspension |
| § 15:10 | Fraudulent transfers or conveyances           |
| § 15:11 | Executions                                    |
| § 15:12 | Garnishment                                   |
| § 15:13 | Bankruptcy                                    |
| § 15:14 | Claims against estate of obligated party      |

# CHAPTER 16. MODIFICATION OF COURT ORDERS

§ 16:1 General considerations

| § | 16:2  | Procedural considerations   |
|---|-------|---|
| § | 16:3  | Change in circumstances required for modification of alimony or child support |
| § | 16:4  | Void or defective orders  |
| § | 16:5  | Mistake   |
| § | 16:6  | Agreement modification  |
| § | 16:7  | Alimony   |
| _ | 16:8  | —Effect of remarriage   |
|   | 16:9  | Child support   |
| _ | 16:10 | —Emancipation of child  |
| _ | 16:11 | —Credit for extra judicial payments   |
| _ | 16:12 | Past-due payments   |
| _ | 16:13 | Custody   |
| _ | 16:14 | —Change of circumstances required   |
| _ | 16:15 | Appeal, modification during   |
| 8 | 16:16 | Clarification of orders   |
| ( | CHA   | PTER 17. FOREIGN JUDGMENTS  |
| § | 17:1  | Generally   |
| § | 17:2  | Full faith and credit—Foreign Judgments; Comity                               |
| § | 17:3  | —Jurisdictional requirements  |
| § | 17:4  | Res judicata: Former spouse's claim for alimony and child support             |
| § | 17:5  | Uniform Interstate Family Support Act   |
| § | 17:6  | Attacking foreign judgments   |
| § | 17:7  | Judgments of foreign countries  |
| ( | CHA   | PTER 18. ANTENUPTIAL AGREEMENTS   |
|   | 18:1  | Agreements defined  |
| - | 18:2  | Public policy of approval   |
| - | 18:3  | Requirements for a valid antenuptial agreement                                |
| _ | 18:4  | Statute of frauds   |
| - | 18:5  | Confidential relationship of parties  |
| - | 18:6  | Remedies upon breach  |
| _ | 18:7  | Related to divorce actions  |
| - | 18:8  | Challenges to validity of the contract  |
|   |       |   |
|   |       | PTER 19. RIGHTS OF MINOR CHILDREN   |
| _ | 19:1  | · · · · · · · · · · · · · · · · · · ·   |
|   |       | Parent-child legal actions  |
| § | 19:3  | Protection from Domestic Abuse  |
| ( | CHA   | PTER 20. TERMINATION OF PARENTAL  |
|   |       | ITS AND ADOPTION  |
|   | 20:1  |   |
| _ | 20:1  | - Jurisdiction and vanua  |

§ 20:3

—Guardians ad item

—Voluntary termination

§ 20:4

| § 20:5  | —Involuntary termination   |
|---------|--|
| § 20:6  | — Youth court; reasonable efforts for reunification  |
| § 20:7  | ——Abandonment, desertion, parental unfitness, or child conceived by unlawful sexual act against other parent |
| § 20:8  | — —Additional grounds  |
| § 20:9  | Court discretion not to terminate  |
| § 20:10 | Adoption   |
| § 20:11 | —Parties to action   |
| § 20:12 | —Parental objection and evidence   |
| § 20:13 | —Jurisdiction and interlocutory decree   |
| § 20:14 | —Final decree and its effect   |
| § 20:15 | —Court records and birth certificates  |
| § 20:16 | —Setting aside of decree   |
| § 20:17 | Foster parent adoptions  |
| § 20:18 | Interstate adoptions (and other child placements)  |
| § 20:19 | Indian Child Welfare Act   |
| CHAI    | PTER 21. FORMS   |
| § 21:1  | Captions for pleadings, adversary and single filed   |
|         | irreconcilable differences cases   |
| § 21:2  | Caption for divorce on ground of irreconcilable differences (joint file)                                     |
| § 21:3  | Complaint for annulment of marriage  |
| § 21:4  | Order of annulment   |
| § 21:5  | Prohibited degrees of consanguinity and affinity   |
| § 21:6  | Separation—Husband's notice to wife's creditors (actual)   |
| § 21:7  | —Husband's notice to wife's creditors (publication)  |
| § 21:8  | Complaint for separate maintenance   |
| § 21:9  | —Defenses of law; answer and counterclaim  |
| § 21:10 | Separation agreement   |
| § 21:11 | Temporary order approving and incorporating separation agreement   |
| § 21:12 | Separate maintenance order; Final  |
| § 21:13 | Complaint for divorce—Basic form   |
| § 21:14 | —Typical grounds   |
| § 21:15 | —Natural impotency   |
| § 21:16 | —Adultery  |
| § 21:17 | —Adultery (another form)   |
| § 21:18 | —Penitentiary without pardon   |
| § 21:19 | —Desertion   |
| § 21:20 | — —Failure to accept new domicile  |
| § 21:21 | ——Constructive   |
| § 21:22 | ——Plaintiff willing to reconcile   |
| § 21:23 | ——Alternate wording  |
| § 21:24 | —Habitual drunkenness  |
| § 21:25 | —Habitual use of drugs   |
| § 21:26 | —Habitual cruel and inhuman treatment  |

| § 21:27    | —Habitual cruel and inhuman treatment (another form)  |
|------------|---|
| § 21:28    | —Insanity   |
| § 21:29    | —Pre-existing marriage  |
| § 21:30    | —Pregnancy of wife by another person at time of marriage  |
| § 21:31    | —Parties related within the prohibited degrees of kinship   |
| § 21:32    | Incurable insanity  |
| § 21:33    | —Petition for appointment of general guardian   |
| § 21:34    | —Order appointing general guardian  |
| § 21:35    | —Oath of guardian   |
| § 21:36    | —Complaint for divorce  |
| § 21:37    | —Judgment for divorce   |
| § 21:38    | Complaint for divorce—Claim for restoration of wife's   |
|            | previous name   |
| § 21:39    | Claim for equitable relief  |
| § 21:40    | Claim to set aside fraudulent conveyance  |
| § 21:41    | Verification—Execution by Plaintiff and affidavit of no collusion with defendant                            |
| § 21:42    | Affidavit for process by publication  |
| § 21:43    | Allegation of jurisdiction where the defendant is a non-<br>resident and his post office address is unknown |
| § 21:44    | Affidavit of attorney about non-residence of defendant where post office address is unknown                 |
| $\S 21:45$ | Affidavit for publication of process by attorney for Plaintiff  |
| § 21:46    | Affidavit by Plaintiff about defendant's being a non-resident   |
| § 21:47    | Lis pendens notice  |
| § 21:48    | —Another form   |
| § 21:49    | Motion for alimony pendente lite (temporary alimony) by defendant wife                                      |
| § 21:50    | Motion for temporary alimony and attorney's fees after complaint  |
| § 21:51    | Answer to motion for alimony pendente lite—No marriage  |
| § 21:52    | —Separate estate  |
| § 21:53    | Affidavit for writ of ne exeat  |
| § 21:54    | Bond on writ of ne exeat  |
| § 21:55    | Writ of ne exeat  |
| § 21:56    | Motion to quash or modify writ of ne exeat  |
| § 21:57    | Motion of Plaintiff for court appointed receiver over defendant's property                                  |
| § 21:58    | Motion for attachment in chancery   |
| § 21:59    | Application for injunction to ensure alimony payments   |
| § 21:60    | Statutory defenses (absolute bar to divorce)  |
| § 21:61    | Answer  |
| § 21:62    | —Cross complaint  |
| § 21:63    | Claim for equitable division of property  |
| § 21:64    | Final Order; Adversary divorce  |
| § 21:65    | Joint motion and consent to trial and divorce on ground of irreconcilable differences                       |
| § 21:66    | Order for trial and divorce on ground of irrecncilable differences  |

| § 21:67  | Joint motion to allow withdrawal of adversarial grounds<br>and denials and requesting divorce on ground of<br>irreconcilable differences |
|----------|--|
| § 21:68  | Order to allow withdrawal of adversarial grounds and denials and granting divorce on ground of irreconcilable differences                |
| § 21:69  | Settlement agreement for divorce on irreconcilable differences with joint custody  |
| § 21:70  | Motion for citation for contempt   |
| § 21:71  | Antenuptial agreement  |
| § 21:72  | Petition for adoption  |
| § 21:73  | —Single petitioner   |
| § 21:74  | —Alternate form  |
| § 21:75  | Final Order of adoption  |
| § 21:76  | Motion to dismiss for failure to state a claim   |
| § 21:77  | Answers, generally   |
| § 21:78  | Answer to desertion  |
| § 21:79  | Defense—Connivance   |
| § 21:80  | —Condonation   |
| § 21:81  | ——Another form   |
| § 21:82  | —Recrimination   |
| § 21:83  | —Provocation   |
| § 21:84  | —Reformation   |
| § 21:85  | —Lack of capacity  |
| § 21:86  | —Antenuptial knowledge   |
| § 21:87  | —Res judicata  |
| § 21:88  | —Ratification  |
| § 21:89  | Res judicata on alimony  |
| § 21:90  | Petition for writ of habeas corpus; Child custody  |
| § 21:91  | Writ of habeas corpus  |
| § 21:92  | —Taking respondent into custody  |
| § 21:93  | Return of writ of habeas corpus with return or answer  |
| § 21:94  | Complaint for modification of alimony and/or child support   |
| § 21:95  | Defenses to modification complaint; Cross complaint  |
| § 21:96  | Enforcing foreign judgments—Action on debt   |
| § 21:97  | —Domestication   |
| § 21:98  | Petition for change of custody   |
| § 21:99  | Petition for change of visitation rights   |
| § 21:100 | Certificate of service   |
| § 21:101 | Notice to produce records  |
| § 21:102 | Notice of deposition   |
| § 21:103 | Notice of service of discovery   |
| § 21:104 | Interrogatories  |
| § 21:105 | Good faith letter to resolve discovery dispute   |
| § 21:106 | Motion to compel answers and responses to discovery  |
| § 21:107 | Notice deeming requests for admissions admitted  |
| § 21:108 | Motion for attorney's fees in Supreme Court  |
| § 21:109 | Motion for attorney's fees to defend modification petition   |
| § 21:110 | Order allowing attorney's fees   |
|          | _ v  |

| § 21:111 | Motion to dismiss   |
|----------|---|
| § 21:112 | Motion for leave of court to withdraw contest or denial   |
| § 21:113 | UIFSA (Uniform Interstate Family Support Act)—Forms matrix                                      |
| § 21:114 | Child support enforcement transmittal 1—Initial request   |
| § 21:115 | Child support enforcement transmittal 2—Subsequent actions                                      |
| § 21:116 | Child support enforcement transmittal 3—Request for assistance/discovery                        |
| § 21:117 | Uniform support petition  |
| § 21:118 | Uniform Interstate Family Support Act—General testimony   |
| § 21:119 | Affidavit in support of establishing paternity  |
| § 21:120 | Locate data sheet   |
| § 21:121 | Notice of determination of controlling order  |
| § 21:122 | Income withholding for support  |
| § 21:123 | Administrative subpoena   |
| § 21:124 | Notice of lien  |
| § 21:125 | Rule 8.05 financial statement (short form)  |
| § 21:126 | Rule 8.05 financial statement (long form)   |
| § 21:127 | Qualified domestic relations order (QDRO)   |
| § 21:128 | Qualified medical child support order   |
| § 21:129 | Power of attorney to delegate parental or legal custodian powers (statutory form)               |
| § 21:130 | Revocation of power of attorney to delegate parental or legal custodian powers (statutory form) |
| § 21:131 | Notice of change of address   |
| § 21:132 | Petition to revoke judgment of divorce  |
| § 21:133 | Order revoking judgment of divorce  |
| § 21:134 | Trial witness subpoena  |
| § 21:135 | Subpoena duces tecum  |

### **Table of Laws and Rules**

### **Table of Cases**

#### Index