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# Constitutional Concerns

Introduction

* **Applies**
  + “Power of the state to regulate the health & welfare of its citizens” 🡪 States regulate FL
  + 10th Amendment
* **Domestic Relations Exception:** Allows FedCt to decline to hear FL issues unless there’s a federal question.

**Family**

* + Right to marry & live as a family unit 🡪 Protected liberty under the 14th Amendment DP Clause *(Moore v. City of E. Cleveland)*
  + Marriage is a basic civil right known to man
  + State can’t limit right of family to live together
  + **TX:** Legal or moral obligation of the head of the family to support it **or** members & dependents (accepting responsibility)
  + **Includes:** Tradition extends to family members that co-habitate
  + **To Restrict:** Weigh state interest v. interest of the family
* **Parent**
  + Constitutional to make a fitness determination, but can’t deny fitness inquiry *(Stanly v. Il)*
  + EP violated when unwed father deprived custody w/out evidence they’re unfit. Req’d by 14th Amendment DP w/ notice & hearing *(Stanley v. IL)*
    - **EP Test:** Legal test (not biological relationship)
    - **Procedure by Presumption:** DP requires notice & hearing to remove custody from a parent (EP)
  + Must be given custody automatically, the declared unfit
  + Custody denied bc of poor finances 🡪 Violates constitutional right
* **Custody**
  + **TX:** Only state that allows 12-person jury to decide custody
  + **Lawful termination of custody**
    - Dependency
      * **Applies:** Dependent child w/out support
    - Neglect
    - Proper notice, hearing & facts
    - Death of both parents
  + **Rights protected by the USSC concerning family**
    - Right to live together - integrity
    - Right to marry (hetero only)
    - Care, control, & custody / right to nurture the child
    - Right to reproduce *(Skinner)*
    - Privacy in the home *(Griswold)*
    - Right to companionship of the child
  + **Rule:** States can’t shortcut eliminating the rights protected by US constitution with per se rules
* **Constitutional Concerns !!!**
  + Domestic relations w/in province of states **!!!**
  + Const limits: race, polygamy, right to marry **!!!**
  + Domestic Relations Exceptions **!!!**
  + Fundamental Rights of parents concerning their children: care, custody, mgmt., education **!!!**

Restrictions on the Freedom to Marry

Right to Free Exercise of Religion

* **Rule:** Religious belief must be well-grounded to warrant an exception to general law. EX: Can require kids to attend school
* **Amish Exception:** Established by long-standing, recognized beliefs. Protected by 1st Amendment *(WI v. Yoder)*
* **Policy:** State interest in educating kids insufficient to interfere w/ the free exercise of religion

Polygamy

* **Rule:** Congress can’t regulate religious beliefs, but may regulate religious action that violates the law *(Reynolds v. US)*
* **Exception:** Can’t practice polygamy even if part of one’s religious beliefs
* **Policy:** Avoid placing religion above the law
* **Test:**State interest in banning illegal religious actions outweighs a person’s right to freely exercise their religion
* **Historical:** Strong precedent against polygamy & bigamy. Was punishable by death
* **Note:** Marriage is a civil K & a status

Interracial Marriage

* **Rule:** Can’t restrict the right to marry based on race. Violates EP bc race is a suspect class & a fundamental right *(Loving v. VA)*
* **Test:** Strict Scrutiny. Must have compelling state interest **&** law narrowly tailored to achieve it
* **Purpose:**A valid marriage created in another jsd should be recognized as valid in other jsd’s
* **Applies:** Legislative miscegenation is unconstitutional (mixing of races by sex or marriage)
* **Vs. Same-Sex Marriage**
  + §’s clearly drawn upon gender-based distinctions. A § that makes the legal consequences of an action turn on race is invalid. Seems that under full faith, & credit the states should have to recognize same-sex marriages validly made in another jsd. BUT, there’s a FF&C exception: If it directly contravenes the policy of that jsd, they don’t have to recognize it. SupCt is final arbiter. States can decide the definition of marriage

Marriage can’t be barred by support obligations

* **Rule:** Can’t deny marriage license just bc someone has outstanding child support obligations *(Zablocki v. Redhail)*
* **Test:** A § that significantly interferes w/ the exercise of a fundamental const’l right must be supported by sufficiently important state interests & narrowly tailored to effectuate those interests
* **Analysis:** Strict Scrutiny
  + Heightened scrutiny bc important gov’t interests that are substantially heightened by the law
* **Policy:** Older than Bill of Rights & part of the fundamental right to provacy
* **Less Intrusive Regulations**
  + Criminal charges
  + Civil Claim EX: Garnish wages, suspend license (DL, hunting)
  + Can ask about child support obligations on marriage license EX: Lie 🡪 Crime
* **Legitimate State Regulations**
  + 24-hour waiting period (Still allows you to marry)
  + Age
  + Marital Status
  + Consanguinity (blood related marriages)

Constitutional Rights of Grandparents

* **Rule:** State can’t substantially interfere w/ parents fundamental right to make decisions concerning care, custody, & control of their children *(Troxel v. Granville)*
* **Applies:** Custody battle bw parent & non-parent (could be any 3P)
* **Doesn’t Apply:** Fit parent 🡪 No reason for state to inject itself into the private family realm to question how they raise the child  
  **Rebuttable Presumption***:* A fit parent will act w/in the best interest of the child
* **To rebut**
  + Must show parent is unfit **or**
  + Removing visitation from the grandparent will be harmful to the child
* **§ 153.432 Suit for Possession or Access by Grandparent**
  + Step-grandmother 🡪 Not in class of relatives who have standing 🡪 Ct doesn’t have jsd. Thus, Ct doesn’t have discretion to hear facts of her position
  + Grandfather 🡪 May have standing for access to the child, but he must overcome presumption that biological parent will act in best interest of the child
* **§ 153.433 Possession of or Access to Grandchild**
  + 153.432-3. § was amended following *Troxel* to make it comply with the presumption
  + TX § is more lenient, but *Troxel* is supreme
* **Primary problem w/ WA SupCts handling of *Troxel?***
* No justification for state interfering w/ mom’s constit’l right to make decisions concerning care, custody, & control of her kids. The code was too broad bc anyone could request visits & Ct could grant them. Troxels petitioned for 2 wks/month + 2 wks in summer w/ granddaughters, which was significant bc they were *never* denied visitation.

Homosexuality

* **TX Majority:** Doesn’t recognize same-sex marriage
* **TX Rule:** No SMJ over a same-sex divorce granted by another state *(In re Marriage of JB)*
* **TX Rule:** TX Ct can’t issue a divorce decree for same-sex marriage *(Mireles v.**Mireles)*
* **Rule:** State can’t make private, consensual sexual conduct a crime, regardless of sex. Violates EP. *(Lawrence v. Taylor)*
* **Policy:** Not minors, no injury, not public, not prostitution, doesn’t formally recognize a relationship
* **O’Connor’s Concurrence:** Unconstitutional, but don’t overrule *Bowers*—shouldn’t expand rights
* **Reason to overrule *Bowers*:** Premised on married couples right to commit deviate sexual intercourse, but didn’t consider it an EP issue. Instead it said sodomy could be prohibited. If not overruled, the fitness of parents could be scrutinized bc it would still be a crime

**Defense of Marriage Act (DOMA)**

* **Definition of Marriage:** Bw one man & one woman
* **Applies:** Federal purposes
* **Full Faith & Credit Clause:**States must give FF&C…. 🡪 Doesn’t apply bc of DOMA
* **Public Policy Exception:**No states req’d to recognize same-sex marriages from another state if it violates their policy (EX: Constitutional amendments that ban recognition of same-sex marriage
* **Purpose:**Created to prevent SS couples from seeking Fed benefits. They stopped defending it
* **Test:** Unclear. Should be rational basis bc homosexuals aren’t a suspect class (to date)
* **Issue:** Congress by an act can’t discredit the FF&C Clause🡪 Undermines it
  + - *How did/why they refuse to acknowledge marriage in another jsd?*
      * Under the FF&C clause, a state does not have to recognize a marriage from another jsd that violates their policy. There is strong precedent for this exception.

Transexuality

* **Rule:** No same sex marriage for post-operative transsexuals to someone of their natal sex *(Littleton v. Prange)*
* ***Corbett* Factors:** Chromosomal, gonadal, &genital [*Consider:* Psychological]
* **Justice Angelini’s concurring opinion:** *Corbett* factors may be hard to apply to intersexed individuals
* **Dissent:** Let TrCt decide, not summary judgment. Amended document should completely nullify the 1st document
* **Rights compromised:** Gender, Collecting as a life insurance beneficiary, Wrongful death action, descent & distribution

# Marriage

Formal vs. Informal Marriage

Formal Marriage

* **§2.001** A *man & a woman* must obtain a marriage license. No same-sex marriage
* **§2.002** Application for marriage license
  + Not presently married unless renewing vows
  + Not related by consanguinity or affinity
* **§2.003** To marry if under 18 🡪 Must have parental consent **or** prior marriage dissolved **or** court order *see §2.101-103 reqt’s*
* **§2.005** Proof of identity & age EX: Birth certificate, DL, passport, or foreign gov’t
* **§2.006** Absent applicant req’ts EX: Prison, military, displaced for work, medical illness
* **§2.013** Encourages 8-hour premarital education course bc too easy to marry
  + **Benefits:** Waives licensing fee & 72-hour waiting period
  + Application process
  + Limits on issue: age & consanguinity **\*pay attention**
  + Ceremony & return of license

Informal CL Marriage

* **§2-401 Requirements to Prove**
  + - * **a) Circumstantial Evidence or**
    - 1) Agreed to be married **&** Can be inferred
    - 2) Afterwards lived together as husband & wife in TX **&** No specific time period
    - 3) Represented to others they were married No waiting period
      * **b) Statutory Declaration of Marriage**
    - 1) Heading: “Declaration & Registration of Informal Marriage + County
    - 2) Full names, maiden surname, address, DOB, POB, SSN
    - 3) Prove age & identity
    - 4) Not related by consanguinity or affinity
    - **Note:** Can be back-dated
    - **Advantage:**SS benefits, employment benefits, right to bring a lawsuit, community property, etc
* **TX Minority:** Recognizes CL Marriage (req’ts vary by jsd, # increased by grandfather clauses)
* **Majority:** Doesn’t recognize CL Marriage
* **Purpose:** Fairly & equitably protect reliance on property interests EX: Economically independent spouse holds title
* **Problems:**Fraud
* **TX Rule:** Denial of marriage by a party doesn’t bar CL marriage [CL marriage § later amended] *(Estate of Claveria v. Claveria)*
* **TX Rule:** Prior divorce doesn’t bar CL Marriage *(Lewis v. Anderson)*
* **TX Rule:** Can’t be presently married to another person
* **TX Rule:**Minor lacks capacity to consent to CL marriage (even if meets holding out req’ts). Must be over 18.
* **TX Rule:** TX CL marriage requires holding out. 2 types of evidence:*(Winfield v. Renfro)*
  + **Legally Sufficient Evidence**: *Agreement* to be married
  + **Factually Sufficient Evidence:** *Intent* to be married
* **Rule:***(Transamerican v. Fuentes)*
* **§ of Limitations** 
  + **Historical Rule:** 1 year *(Shepherd v. Ledford)*
  + **Modern Rule:**2 years w/in CL marriage ending
  + **Purpose:** Avoid stale claims EX:EP claim bc property concerns 🡪 Can file a declaration to extend *(Shepard)*
* **Disadvantage:** More difficult to challenge **!!!**
* **General**
  + - * Separated from a previous CL marriage 🡪 Must dissolve it by § req’s
      * No such thing as CL divorce 🡪 If CL Marriage 🡪 Must get a divorce **!!!**
      * §2.005 Age req’t, one man & one woman, etc

Void vs Voidable Marriage

Voidable Marriage Generally For Capacity & Consent Issues

* **Definition** - Legal impediment/defect to the marriages validity
  + Remove defect 🡪 Can become a valid marriage
  + Marriage subject to annulment 🡪 Usually voidable, not void
    - If subject to annulment 🡪 Can’t challenge after spouse dies
  + If they knew of the impediment 🡪 Can’t annul, must divorce
  + If the cohabitate (sex) after learning of the impediment 🡪 Can’t annul
* **Remedy:** Annulment
  + **Requirements:** No capacity (consent) to enter into marriage
  + **Doesn’t Apply:** After spouse dies, Minors
  + **Effect:** No property settlements like divorce
* **Who can establish**
  + Marital parties **or**
  + Minors parents (must be w/in 90 days)
* **Timeframe:** Generally 72 hours
* **Applies**
  + **§6.102 Marriage to Minor** but 16-18 allowed if Ct order or parental consent
    - Suit brought by next friend 🡪 Must be w/in 90 days
  + **§6.103 Underage Marriage barred by adulthood** 🡪 Becomes valid @ 18
  + **§6.104 Discretionary Annulment** 🡪 Ct has discretion to annul EX: Pregnant
  + **§6.105 Under the influence of alcohol or narcotics** (can’t cohabitate, expires when not under the influence)
  + **§6.106 Impotency**
    - **Requirements:** Permanent impotence **&** didn’t knew when married **&** no sex since learning
    - **Policy:** Implicit understanding in marriage that you can procreate
  + **§6.107 Fraud Duress, or Force** No sex after learning
  + **§6.108 Mental Incapacity**
    - Best interest **&** No capacity when married **&** no sex during **&** π didn’t know/couldn’t reasonably know
  + **§6.109 Concealed Divorce** 
    - **Requirements**
      * Not divorced w/in 30 days preceding the marriage ceremony **&**
      * Didn’t know **&**
      * Reasonably prudent person wouldn’t know
    - **§oL:** 1 year after discovering
  + **§6.110 Marriage less than 72 hours after issuance of license**
    - **Requirement:** Must be w/in 30 days
    - **Exceptions:** Premarital counseling **or** military
* **Doesn’t Apply**
  + **§6.111** After spouse dies
    - **Exception:** Spouse dies & mental incapacity w/in 1 year of death
    - **Requirements:**
      * Annulment not pending on date of death 🡪 *May if marriage w/in 3 years of death* **&**
      * Decedent didn’t have mental capacity to understand the marriage or the ceremony (when married)
        + Unless later gains capacity & understood circs & acquiesced 🡪 Marriage stands

Void Marriage

* **Definition** - Can’t be made into a valid marriage
* **Applies**
  + **§6*.*201 Consanguinity**
    - Ancestor or descendant by blood or adoption
    - Brother or sister (whole or half-blood)
    - Son or daughter of a brother or sister (whole or half blood)
    - Aunt or Uncle (whole or half blood)
    - Cousin (whole or half blood) ***TX Maj*** *doesn’t allow marriage to 1st cousin*
  + **§6.202 Can’t marry while prior marriage still exists**
  + **§6.203 Certain Void Marriages Validated** Grandfather clause **or** Consanguinity relations prior to 1/1/1970
  + **§6.204 No Same-Sex Marriage or Civil Union**
  + **§6.205 Can’t marry a Minor under 16** Unless §6.103 Ct order or parent approval
    - Ct can consider pregnancy
  + **§6.206 Affinity: Can’t marry Stepchild or Stepparent** exception if before 1970
    - **TX Minority:** Current *or* Former
    - **Majority:** Current *only*
* **Who can establish:** Parties, Single party if spouse mentally incompetent or minor, 3P can collaterally establish void marriage

# Dissolution of Marriage

* **How to Dissolve !!!**
  + 1) *Suit for Dissolution of Marriage:* Divorce
  + 2) *Suit for Dissolution of Marriage:* Annulment **Applies:** Voidable
  + 3) Declaratory Judgment to render void
    - Never a valid marriage to begin with 🡪 Get Ct order & declaratory judgment **or**
    - Death of Spouse
* **§1.101** Every marriage presumed valid unless expressly made void or voidable & annulled **!!!**
* **§1.102** Most recent marriage presumed valid **!!!** *see Laveria. Davis v. Davis*
  + **To Rebut:** Prove valid (w/ marriage certificate & not divorced) **!!!**
  + **BoP:** Challenging party must show there wasn’t a divorce
  + When 1st marriage is dissolved & continue w/ 2nd marriage 🡪 2nd marriage becomes VALID CL Marriage
* **§1.103** TX law applies to couples domiciled in TX (even if married in another state)
* **§1.104** Married in TX 🡪 Have capacity of adult, power to K (age irrelevant but some § limits) **!!!** *History: Women didn’t*
* **§1.105** Spouses not req’d to join each other in suits they file or are in. Liability not req’d to apply to both spouses
* **§1.106** Can’t sue spouses lover for criminal conversation DAS !!! EX: For sexual affair
* **§1.107** Can’t sue spouses lover for alienation of affection !!! EX: Leave bc of affair
* **§1.108** Promissory agreement on consideration of marriage or non-marital conjugal co-habitation must be in writing

**Other Restrictions:** Age, Consanguinity, Affinity, Division of property, Child custody, etc…

* **Specific issues from divorce cases taken from jury**
  + 1) Purely advisory
  + 2) Property divisions (only a judge can make a just/right division)
  + 3) Child support
  + 4) Determining denial of jury was wrong

No-Fault Divorce !!!

* **Establishing**
  + **§6.001 Insupportability** (Most common) **!!!**
    - **Requirements**
      * Marriage became unsupportable because of discord or conflict **or**
      * Discord or conflict destroys marriage legitimacy **or**
      * No reasonable expectation of reconciliation
  + **§6.005 Living Apart** w/out cohabitation for 3 yrs
  + **§6.007 Confinement in Mental Hospital** <3 yrs
* **How to Prove**
  + Direct evidence (testimony for all 3 elements by parties)
  + Observations of parties
  + Circumstantial evidence to show they disagreed
* **Requirements**
  + **§6.402** **Must plead sufficient facts** *(In re Marriage of Richards)*
    - Who, where, when, how, in plain & concise language about the COA/defense. Provides notice to ∆
    - If sufficient facts not present 🡪 Opposing party may file special exception to request more facts
    - Don’t need evidentiary facts
  + **§6.502 Privacy Concerns** Ct can order party to produce documents **&** temporary injunctions
  + **§6.501** Temporary orders turned over to court in divorce proceedings
* **Not required:** To establish source of conflict
* **BoP:** π to establish § elements
  + **§6.402** Only need grounds substantially like the § language
  + Not subject to special exceptions EX: Pleading w/ facts 🡪 Strike them from the record
* **Issue:** Credibility
* **Applies:** All states abide by this rule. Majority of TX divorces are for “insupportability”
* **Advantages**
  + Keep it civil bw parties. Either party can petition
  + State doesn’t have to make moral judgment EX: Who breached marital K
  + Judicial economy (efficient)
  + Parties economy (easy, cheaper)
  + Keeps dirty laundry out fo public record
  + Limits ∆’s potential legal defenses who prefers to remain married
* **Disadvantage:** Negatively affects ability to obtain custody of child
* **Defenses**
  + **Condemnation** if reasonable expectation of reconciliation

Constitutionality

* **Rule:** No fault divorce is constitutional. State regards marriage as a civil K & won’t delve into the religious aspects/beliefs of a party. State can regulate marriage civilly.*(Waite v. Waite)*
* **Rule:** State can regulate create & dissolution of marriage (legitimate state interest)
* **Rule:** State regulation of divorce isn’t an invasion of the right to privacy
* **Rule:** State regulation of divorce doesn’t violate the Free Exercise Clause of the TX Constitution
  + **Free Institutions:** Necessary state gov’t institutions that ensure local gov’t rights (marriage not a free institution)
* **Rule:** Open Courts Doctrine **doesn’t apply** to divorce suits bc not CL COAs
  + **Purpose:**Meet peoples needs & changing circs
* **Dissent**
  + Religion intertwined in marriage so any state investigation into marriage violates religion
  + Goes to the proof of proving insupportability. Demonstrates that no-fault divorce is ok
  + **Open Courts Doctrine**
    - Argues legislature arbitrarily & unreasonably interfered w/ his access bc abolishing the defense of recrimination, it abolishes a CL course of action (recrimination= a response to an accusation.  Often used in adultery-based accusations, i.e. “I cheated on you but you cheated on me!”—offense doesn’t have to be the same)
    - Creatures of statutory law that don’t apply here
* **Specific issues from divorce cases taken from jury**
  + 1) Purely advisory
  + 2) Property divisions (only a judge can make a just/right division)
  + 3) Child support
  + 4) Determining denial of jury was wrong

Fault Based Divorce !!!

* **Establishing**
  + **§6.002 Cruelty** that renders the marriage insupportable *(Henry v. Henry)*
    - ***Henry* Evidence of Cruel Treatment Factors**
      * Adultery, Verbal abuse, physical violence
      * *Indignities:* Treatment of spouse in front of family
      * Other things that undermine the marriage relationship
    - **Behavior must be “incapable of being borne, unendurable, insufferable, intolerable”**
      * **Standard:** Reasonable person
  + **§6.003 Adultery**
  + **§6.004 Conviction of Felony** 
    - **Requirements:** Convicted & imprisoned
    - **Doesn’t apply:** Convicted by spouses testimony **or** pardoned
  + **§6.005 Abandonment**
    - **Requirements**
      * Intent to abandon **&**
      * Remained away for +1 year
    - If you cause the spouse to leave 🡪 Intent to abandon must still exist
* **Advantages:** Increased chance of custody, Greater share of property, Higher child support
* **Effect:** Can lead to unequal distribution of property
* **Doesn’t Apply:** If you condone, cause, or also do it

**Tip:** Plead insupportability as a back-up

* **Defenses**
  + ~~Recrimination & Adultery~~ (abolished)
  + **Condemnation** if reasonable expectation of reconciliation
  + **Connivance** Adulterer knew they were cheating, being cruel, etc. & did nothing/condoned it

Underage Marriage

Underage Formal Marriage Voidable

* **Rule:** Valid if reasonable appearance of authority & 1+ party participated in good faith & treats it as valid *(Husband v. Pierce)*
* **Rule:** Minor lacks capacity to enter CL marriage (even if they meet the holding out req’ts)
* **Policy:** Marriage entered into by an underage party is voidable not void
* **Applies:** Even w/out a valid marriage license, whether conducted by an authorized person or not
* **Rationale:** Presume marriage valid unless expressly made voidable & annulled
* **Emancipation Effect:** Minor married in TX has power & capacity of an adult in formal marriage until voided
  + Parents can only try to get the marriage annulled (it’s void*able*)
* **CL Marriage vs Ceremonial Marriage**
  + CL Marriage 🡪 Must be 18
  + Ceremonial Marriage🡪 Can marry if 16-18 w/ parent consent or Ct order

Underage CL Marriage Void

**Rule:** Must be over 18 for CL marriage. It’s ~~voidable~~ (now void) until turns 18 or dies *(Kingery v. Hintz)*

**Exception:** Obtain Ct order & have a ceremonial marriage

**Rule:** Voidable marriages are subject to § changes. Parental consent insufficient even if pregnant *(Creel v. Martinez, controversial)*

**6.102**

* + - Annulment of a person under age 18; or
    - 16-18 yrs old;
    - Ct can annul if 16-18; Next friend, parent, guardian, court, agent can bring this suit
    - **§oL:** w/in 90 days of marriage if it is by next friend
    - **Doesn’t Apply:** Can’t bring suit once turns 18
    - Ct has discretion, no jury req’t

Putative Spouse

* **Definition:** Not a valid marriage, but putative spouse has some rights upon learning the marriage is void *(Davis v. Davis)*
* **Requirement**
  + Entered into the relationship in good faith **&**
  + No knowledge a previous marriage was undissolved (or mistaken, good-faith belief it was dissolved)
* **Effect:**Putative spouse gets ½ of marital property (bc innocent party)
* **Terminates:** Relationship ends **or** learn of the undissolved marriage
* **Lord Mansfield’s Rule:** A child born in wedlock is presumed to be H’s child 🡪 Can’t bastardize your own child w/out evidence it isn’t yours (EX: by showing no access to mom @ conception)
* **Rule**: Valid marriage 🡪 H presumed to be father 🡪 Learns it’s not his 🡪 Disestablish paternity w/ DNA test

JSD Over Non-Resident ∆

**§6.305 Acquiring Jsd Over Nonresident ∆** *(Goudenbaur v. Goudenbaur)* TX Long-Arm §

* + - State is last marital residence **&** Applies to SAPCR
    - Filed w/in 2 yrs of relationship ending **&**
    - Constitutional basis (US or TX)

**§6.308 Exercising Partial Jsd**

Temporary Orders When Children Aren’t in Issue

* **§6.501 Purpose**
  + Atty fees, maintenance costs, prohibit spending § for < living expenses, award control over business
  + **Receivership:** Ct may appoint a receiver to receive property that’s not exactly marital property *(Harmon v. Schoelpple)*
* **§6.502 Temporary Orders**
  + Issued w/out a hearing
  + **Applies:** Threats, bodily injury, destroying or concealing property
  + **Requires notice & a hearing**
    - Exclude spouse from living in their home unless violence
    - Prohibits spending § for reasonable expenses
    - You can’t get a TRO that prohibits someone from engaging in reasonable business venture
  + **Appointing a receiver is the ONLY temporary order where you can attain an INTERLOCUTORY ORDER !!!**
    - Otherwise a writ of mandamus should be used
    - No legal authority for the order **or** abuse of discretion 🡪 Can file a writ of mandamus
    - **Requirements:** No authority to enter order **&** abuse of discretion
* **§6.503** Temporary injunction 🡪 No order req’d to set suit for trial
* **§6.504** Protective order for family violence. Long-term effect, greater protection, can’t buy a gun, registered w/ police
* **§6.505 🡪 *See §6.705* Marriage Counseling**
  + **Applies:** Can order counseling if reasonable expectation of reconciliation
  + **Doesn’t Apply:** Can’t use appointed marriage counselor’s testimony

# Suits Affecting the Parent-Child Relationship (SAPCR)

* **§101.032 SAPCR !!!**
  + **Applies:**
    - Suit filed in which appt of managing or possessory conservator **or**
    - Access to or in support of a child **or**
    - Establishment/termination of PC relationship
  + **Doesn’t Apply !!!**
    - Habeas Corpus proceeding
    - Suit to determine parentage **or**
    - to establish, enforce, or modify child support
* **§101.003. Child or Minor** Under 18 **&** isn’t & hasn’t been married or hasn’t had the disabilities of minority removed
* **§101.007. Clear and Convincing Evidence** 
  + **Definition:** A firm belief or conviction as to the truth of the allegations *Common in family law*
  + **Fall-back BoP:** Preponderance of evidence
* **§101.024. Parent**
  + **Includes:** Mother, father, presumed father, adjudicated to be father by Cw/ jsd, acknowledged father, or adoptive parent
  + **May Include:** Person ordered to pay child support (under this title)
  + **Doesn’t Include:** Person whose parental rights have been terminated
* **§101.025. Parent-Child Relationship** Legal relationship bw child & their parents
* **§101.026. Render** Judge’s pronouncement of Ct ruling. Oral, in Ct reporters presence, or written (Docket or separate instrument)
* **§101.029. Standard Possession Order** Provides a parent w/ rights of possession of a child
* **§101.0302. State Disbursement Unit**
* ‘‘State disbursement unit’’ means the unit established and operated by the Title IV–D agency under 42 U.S.C. Section 654b that has responsibility for receiving, distributing, maintaining, and furnishing child support payments and records on or after October 1,1999

Venue

* **Rule:**Ct must transfer SAPCR suit to county the child has resided in for 6+ months *(Leonard v. Paxson)*
  + Can’t fix venue by K unless meets exception
* **Policy:** Best interest of child **&** prevents forum shopping
* **§103.001 Venue for Original Suit**
  + **Rule:** Original suit shall be filed in the county where the child resides, unless
    - Another Ct has continuing exclusive jsd (Chapter 155) **or**
    - Venue is fixed in a suit for dissolution of a marriage
  + Adoption 🡪 Can file in county where child or π resides
  + Child resides where their parents reside, except:
    - Ct-appointed guardian or probate court & managing conservator not appointed 🡪 Child resides in guardians county
    - Parents don’t reside in same county **&** if managing conservator, custodian, or guardian not appointed 🡪 Child resides in county of parent w/ actual care, control, & possession
    - If in care & control of non-parent parent & managing conservator, custodian, or not appointed 🡪 Child resides in county of parent w/ actual care, control, & possession
    - If child in actual care, control, and possession of an adult *other than a parent* & parent & guardians whereabouts unknown 🡪 Child resides in county of parent w/ actual care, control, & possession
    - (5) if the person whose residence would otherwise determine venue has left the child in the care and control of the adult, the child resides where that adult resides;
    - If guardian or custodian appointed by another state or country 🡪 Child resides where guardian is
    - If not under actual care, control, & possession of an adult 🡪 Child resides where they’re found

**§103.002 Transfer of Original Proceedings w/in State**

* + - Venue of a suit improper& no other Ct has continuing, exclusive jsd of the suit 🡪 Transfer to proper venue
    - If divorce suit affecting child filed in another Ct 🡪 Transfer to that Ct
    - Chapter 155 *[Continuing, Exclusive Jurisdiction; Transfer]* apply to a transfer of:
      * Original suit under this § **or**
    - Modification or motion for enforcement

**§103.003 Transfer of Original Suit w/in State when Party or Child Resides Outside State**

* + - Original or child support suit filed in TX *[under Chapter 159 Uniform Interstate Family Support Act]* 🡪 Transfer to county of party in suit if all other parties & children reside outside TX
    - 1+ parties reside outside of TX & +1 reside in diff TX counties 🡪 Transfer using these priorities
      * To Ct w/ continuing, exclusive jsd
      * Child’s county of residence, if
      * No Ct w/ continuing, exclusive jsd **or**
      * Ct w/ continuing, exclusive jsd finds neither a party nor a child affected by the suit resides there **or**
      * Most appropriate county
    - If original suit for child support applies here 🡪 Use Chapter 155 *[Continuing, Exclusive Jsd; Transfer]*

**§155.201 Mandatory Transfer for divorce**

* + Ct with SAPCR shall transfer suit to Ct where divorce pending
  + Suit to modify or enforce, on timely motion,🡪 Ct shall transfer to diff city if child lived there for 6+ months
  + Must reside for 6+ months to have standing

Standing

Actual Care

* **Rule:** For a non-parent to assert §102.003(a)(9) actual care req’t (whether parent adequately cares for kids) *(In the Interest of CTHS & CHRS)*

Actual Care, Control & Possession

* **Rule:** No SMJ 🡪Must have actual care, control & possession of the child to create standing *(Coons-Anderson v. Anderson)*
* **§102.003(9) Standing (if no smj ?)**
  + **Applies:** A person, other than a foster parent, who has had actual care, control & possession of the child for +6 months ending not more than 90 days preceding the filing date *(Jones v. Fowler)*
  + **Doesn’t Apply:** Visitation insufficient
  + Fail to develop & support the argument 🡪 Claim waived bc failed to follow the rules of procedure
* **Open Courts Doctrine:** All Cts shall be open & every person hall have a remedy for injuries by due course of law
* **In Loco Parentis** 
  + **Definition:** In place of a parent, when a person assumes a parent-like duties & responsibilities w/ a child that’s not theirs
  + **Common Scenario:** Parent unable or unwilling to care for their child. Can be temporary.
  + **Factors:** Visitation. Must show more than just living together
  + **Does §102.003(9) support deceptive conduct by a party? How?**
* **Rule:** Care, custody & control don’t need to be exclusive to have standing *(In re Fountain)*
* **Standing & Liberal Construction of Pleadings**
* **Rule:** Standing req’t not applied to “mechanicalistically.” Care, custody, & control doesn’t have to be continuous & uninterrupted *(Rupert v. McCurdy)*
  + **EX of a less mechanistic approach:**

Surviving Step-Parent

* **Rule:** *(Dickerson v. Dickerson)*
* **Issue:** Whether principal residence vs. primary residence has the same connotation for standing as for conservatorship
* **Holding:** Step-mom has standing to bring suit bc care, control, & possession not req’d to be uninterrupted for 6 months
* **vs *Troxel*** which said a parent has a 14th Amendment DP liberty interest to make decisions re how to rear their child. To balance w/ *Troxel,* the stepmom would need to show on remand that severing her relationship w/ the child would cause actual harm to the child
* **Elements of Residency** *(per SupCt, under general civil venue §)* 
  + 1) Fixed place of abode
  + 2) Occupied consistently over a substantial period of time
  + 3) that’s permanent rather than temporary
* **What do you think about the Cts explanation of “primary residence” & standing?**
* **Consider the interplay bw the standard possession order & primary residence.**

Denial of Paternity

* **Rule:** To be named as managing conservator, H must show 1) child's best interest **&** If child remains w/ mom, it will (2) significantly impair his well-being*(TWE v. KME)*
* **Facts:** Mom argues he should be denied custody bc he’s not the actual parent. He argues he’s had continuous care control, & possession of the child for 6+ months.
* Who can assert: Only parents
* **§12.06 (?) Psychological father**
  + **Definition:** Child believes he’s dad
  + **Effect:** Can *shrink his parental responsibilities* w/ DNA test to prove he’s not dad (but mom can *deprive him of rights* too)
* **§oL**
  + **§160.607 Child having Presumed Father** 4 years unless mistake
    - * No later than the child reaches 4
      * Unless Ct determines
        + Presumed mom & didn’t live together or engage in sex when conceived **or**
        + Mistaken belief he’s dad bc misrepresentation 🡪 §160.308
      * **§101.0010 Acknowledged Father:** Established father-child relationship
  + **§160.606 Child w/ no presumed, acknowledged, or adjudicated father** No time limit
    - No Time Limit until child is an adult **or** earlier proceeding dismissed
    - **§101.0015 Alleged Father:** Father alleged to be possible genetic father but paternity not yet determined
      * **Doesn’t Include**
        + Presumed father
        + Parental rights terminated **or** declared not to exist
        + Male donor
* Signing acknowledgement 🡪 Has the effect of the adjudication of paternity 🡪 Must support child for 18 yrs unless defrauded §160.609
  + Often signed in hospital when child born & dad’s excited, but doesn’t realize the effect of it
  + Some jsds allow 60-90 day grace period
  + In a relationship think the child isn’t yours 🡪 Don’t sign the acknowledgment
  + **How to get out of it?** 
    - **§160.308 Challenge after expiration of period for rescission**
      * *In Sum:* After 60 days has run, the effect of an acknowledgement of paternity is an adjudication of paternity unless meets §160.308 to show the effect was fraud, duress, or material mistake

JSD- Child Support, Visitation Expenses, Custody, & Visitation

* **Rule:** PJ required for child support and visitation expenses **!!!** Exists if it’s the child’s home state (resided in for 6 months **or if younger than 6 months** 🡪 since birth [*see UCCJEA*] *(In re SAV & KEV)*
* SMJ required for custody and visitation **!!!** Can get if child’s home state or significant connections 🡪 Creates PJ over non-resident parent

Escaping SAV

* **Rule:** Must be sufficient, purposeful, continuous, & systematic contacts bw states to establish PJ. Look to level of activity in the state (doing business, owning property, length of time, etc) *(In the Interest of TJW)*

Personal JSD

PJ From Residency

* **Rule:** PJ is sufficient for a child support claim *(Flores v. Melo-Palacios)*
* **Residency Req’t:** Living & physically present in TX
* **§oL:** 20 days to contest a TX order
* **Special Appearance:**
  + **BoP** ∆ must show Ct doesn’t have PJ over him. Failure to assert 🡪 Waives it & Ct will assert jsd
* If ∆ answers “no” to PJ 🡪 Shall stand void of additional facts alleging PJ

PJ From Service (Nonresident)

* **Rule:** Ct may exercise PJ over nonresident if he personally served in TX *(see below for rest of §)*
* **Policy**: State interest to assert jsd over a short-term visitor who owes child support. AGs can enforce. Visitor risks benefits from police protection *(Bernham)*
* **§102.011 Jsd over Nonresident**
  + (a) SMJ by UCCJEA
  + (b) PJ if service req’d or their personal representative (includes nonresident) if:
    - **Personally served in TX**
    - Submits to jsd by consent, general appearance, or filing a waiver of PJ
    - Child lives in TX bc of their acts/directives
    - Resided w/ child in TX
    - Resided in TX & paid prenatal expenses
    - Had sex in TX & could be their child
    - In paternity registry *[Uniform Parentage Act]*; or
    - Any other basis w/in Constitution

PJ From Minimum Contacts

* **Requirements** *(In re Gonzalez)*
  + Minimum contacts **&**
  + Comports w/ fair play & substantial justice
* **BoP:** ∆ must show he doesn’t have minimum contacts
* **Applies to:** Citizens, foreign citizens
* **Long-Arm § applies if child born in TX**

Service of Process

* **Rule:** When grandma filed suit seeking guardianship, she stepped into the shoes of the guardian, creating a legal right for her to receive mandatory notice of service (bc actively pursuing her interest in the child). She had a legitimate right to be named guardian bc orphan child, until appellee could prove he was the father. Same result under current § *(Roberson v. Pickett)*
* **§102.009 Service of Citation** Guardian of person or estate
  + Ct may give notice to
    - Anyone who has/may assert and interest in the child (person who filed for guardianship)
    - Unknown father of child w/ no presumed father
      * **Where?** Mom’s contacts at conception 🡪 Publish where dad approx. lived
      * **Exception:** Child > 1 year…???

Records

* **§105.003(c) Procedure for Contested Hearing** A record is req’d (for SAPRC case) unless parties waived w/ Ct consent *(Stubbs v. Stubbs)*
  + Parties must request Ct reporter 🡪 Tr judge’s duty to make sure it’s entered
  + No record 🡪 Presume record supports the judgment. Don’t have to dismiss if clerk has record of petition & orders
    - **BoP:** Litigant/Appellant must show the records absence wasn’t by their negligence/due diligence
* **~~Review by Writ of Error~~**
  + ~~1. Petition w/in 6 months of judgment date~~ **~~&~~** **Modern:** Use restricted appeal
  + ~~2. By a party to the suit~~ **~~&~~** Filed 🡪 Must get mandatory service
  + ~~3. Who didn’t participate in the trial~~ **~~&~~**
  + ~~4. Error apparent from the face of the record~~
* **§109.002 Appeal**
  + SAPCR appeals are accelerated over other civil cases
  + Must file brief w/in 20 days (vs 30) & clerk must file w/in 10 days (vs 120).
  + AppCt may hear appeal on original TrCt papers **or** on sworn & uncontroverted copies

Ad Litems, Other Appts, & Fees

* **Rule:** TrCt doesn’t have authority to allow guardian ad litem to hire an atty *(Samara v. Samara)*
* **TrCt authority vs TrCt discretion** 
  + **TrCt Authority:** Standard of Review is Error (& perhaps Abuse of Discretion)
  + **TrCt Discretion:** Standard of Review is Abuse of Discretion
  + Don’t follow § or rules of appellate procedure 🡪 Ct may waive that issue
* **Amicus attorney-** Friend of the Ct that suggests the child’s best interest. Doesn’t provide services directly to the child
* **Attorney ad litem:** Represents child's best interests (child’s atty)
* **Guardian ad litem:** Appointed to investigate child’s best interests & obtain records. Not req’d to be atty. Not a party to the suit

Temporary Orders Pending Appeal

* **§6.709** Ct can enforce temporary order even when appeal pending
* **Allowed**
  + Appt temporary conservators
  + Require the temporary support of a child
  + Restrain party from disturbing the peace
  + Prohibit a person from removing child from a geographic area
  + Pay atty fees
  + Suspend the order that’s appealed
* **§oL: §109.001** Order w/in 30 days of appeal date, upon any motion (even Ct) *(In re Gonzalez)*
  + File on 28th day 🡪 too late, get nothing
  + If appeal perfected 🡪 File notice w/in 30 days or 90 days if file extension
* **Purpose:**Protect child’s safety & welfare, protect property, support spouse, cover atty fees, appoint receiver, award family home
* **Jury decisions that Ct must follow** *(Lenz)*
  + Appt of sole managing conservator
  + Appt of joint managing conservator (or if used to find child’s primary residence)
  + Appt of possessory conservator
  + Determining location or residency restriction
* **105.002 Can only be decided by Judge** Can’t demand a jury trial in Adoption **&** Adjudication of Parentage
* **Who gets to decide primary residence & restrictions on geographic area may designate primary residence ???**
  + - **Rule:** Even though you have a right to a jury trial in divorce, it’s advisory
    - **Marital property:** Right to jury trial but Ct decides division of property
    - **Atty’s Fees**: Jury decides amount. Ct decides who pays

# Conservatorship, Possession, Access, & Child Support

Introduction

* With respect to the standard possession order, there is not a presumption for a child under 3. (TrCt has discretion)
* **Parenting Plan**
  + **Applies:** Must be in final order
    - **Exception:** Not req’d if only modifying child support **or** terminating parental rights
  + **Doesn’t Apply**
    - Not req’d to contain ADR procedure parties agree to use before requesting JMC or modification
    - Not req’d to be in temporary order (TrCt can’t require)

Best Interest Factors

* ***Holly* Factors**: Provide for the atty an outline should “best interest” need to be proved *(Holly v. Adams)*
  + **Termination of a Parent-Child Relationship**
    - **Must show some wrongful acts that fall w/in the §’y req’ts & it’s in the best interest of the child**
    - **§ Factors to Consider** (see termination of parental rights §)
      * Fitness of the mother
      * Criminal activity: Whether criminal activity exposes child to harm
      * Parental rights terminated from their past children
    - ***Holly* Best Interest Factors** *Not exclusive*
      * Child’s desires
      * Present & future emotional & physical needs of the child
      * Present & future emotional & physical danger to the child
      * Parental abilities of those seeking custody
      * Programs available to assist these individuals to promote the best interest of the child
      * Plans for the child
      * Stability of home
      * Parent’s acts/omission that indicate PC relationship is improper (& excuses)
    - **Other**
      * Possibility of abandonment or separation
      * Family support
      * **Adoption** 🡪 Factors relevant to potential adopting family
      * Best interest re: support, emancipation. Depends on the case
      * More cooperative parent
      * Other children
      * Parental rights terminated

Joint Managing Conservatorship

* **§101.016. Joint Managing Conservatorship** Sharing of rights & duties of a parent by 2 parties, even if one party awarded exclusive right to make decisions. Usually parents.
* **§151.001 Rights & Duties of Parents** Right to represent child in legal action **&** Other right designated by law *(Urbish)*
* **Includes:** Right to e-communicate w/ child
* **Rule:** Judge has discretion. BoP on challenging party to show abuse of discretion *(Dennis v. Smith)*
* **Managing vs. Possessory Conservators**
  + Managing conservator has physical possession of the child if dad is possessory conservator
  + We abandoned the term visitation, instead it is possessory conservator **!!!**

Presumption

* **§ 153.131 Rebuttable presumption that JMC is in the child’s best interest**
  + No presumption that conservator w/ more possession should decide child’s home or school
* **To Rebut**
  + **Rule:** *(Martinez v. Martinez)*
  + **Facts:**Dad initiated paternity proceeding to seek joint managing conservatorship after learned he was dad
  + **§153.134** When to consider joint managing conservators. *See below*
  + **§153.191(d)** Relates to Sole Possessory Conservator as opposed to subchapter C relates to Managing Conservator
  + **Rule:** *(Doyle v. Doyle)*
  + **How to Establish:** *see §153.34 JC Factors*

Factors to Appoint JMC

* **§153.134 Court Ordered JC**  *(In re Marriage of Bertram)* Contested, Not agreed
  + **Factors**
    - **Primary:** *Holly* Best Interest Factors
    - Physical, physiological, or emotional needs & development of the child
    - Parents ability to give first priority to child’s welfare & reach shared decisions in child’s best interest
    - Whether each parent can encourage & accept a positive relationship bw child & other parent
    - Whether both parents participated in child rearing before filing
    - Geographical proximity of the parents’ residences
    - If child <12 🡪 child’s preference who should have exclusive right to designate their primary
    - Other relevant factors
      * County of residence of the child
      * Rights & duties of each parent
      * Include provisions to minimize disruption of the child’s education
      * **§153.312** Minimum of possession order for 6 days, 8 hours (substantial time)

No Discrimination on Gender or Marital Status

* **Rule:** Can’t discriminate based on sex or martial status in the apt of conservators *(In re McClean)*
* **Fed Standard of Strict Scrutiny:** Compelling state interest
* **§153.003 No Discrimination Based on Sex or Marital Status**
  + Ct considers the qualifications of parties w/out regard to marital status or sex to determine:
    - Who to appoint a sole managing conservator
    - Who to appoint as joint managing conservator **&**
    - Terms & conditions of conservatorship, possession, & access to the child
* **§154.010 No Discrimination Based on Marital Status of Parents or Sex**
  + Amount of support not determined by sex or obligor, oblige, or child **or**
  + Marital status
* **Maternal Preference Rule**
  + **Historical:** Allowed moms preference over what to do w/ the child
  + **Modern:** Don’t discriminate on sex, Cts often look to the primary care giver (often mom)

Contested Conservatorship & Support

*See JMC Facts*

* A request to raise child support is usually met w/ custody modification or request to decrease support.
* Legal & factual sufficiency are not separate points of error
* **§ 153.135 Equal Possession/Access Not Required for JC**
* **§ 153.0071 Mediation** Parties written agreement or Ct motion 🡪 Ct may REFER a SAPCR to mediation (not mandatory)

**Doesn’t Apply**

* + **Rule:** Can’t change child support order unless abuse of discretion
  + **Test:** Whether Ct acted arbitrarily, unreasonably, w/o reference to any guidelines or principles
  + **§153.004(b) History or pattern of domestic violence, neglect, or sexual abuse** *(Pena v. Pena)*
  + **Rule:** Can’t appoint JMC if history or pattern of domestic violence, etc
  + **Family Violence:** Act by a member of family or household, against another family member that’s **intended to result** in physical harm, bodily injury, assault, or sexual assault or threat *(of above acts--assault)*
  + **Doesn’t include**: Self-defense
  + **How to Establish:** One time is enough. Must be credible EX: Eyewitness or otherwise very credible
  + **§153.316** JMC moves within 6 months 🡪Still has duty to pick up the child
    - “Pick up and surrender language” b/c need both to enforce it. Not in decree 🡪 Can’t enforce through contempt (even if other JMC could pick up)

# Continuing JSD & ModifYING Conservatorship, Possession, Access, Residence, Rights & Duties, & Child Support

**TX Family Code 155 & 156**

* **§156.101 Modification of Order Establishing Conservatorship or Possession & Access [2-prong test]**
  + Best interest of child **&** material & substantial change in circs since order/MSA **or**
  + Best interest of child **&** child < 12 expressed written preference for parent who should make residence decisions **or**
  + Voluntary relinquishment <6 months
* **§156.401 Grounds for Modification of Child Support**
  + Material & substantial change in circs since order or MSA **or**
  + 3 years since order **&** child support differs 20% or $100/month from the guidelines
  + **Note:** Amount of support order can only be modified by the earlier of service **or** appearance
* **§153.001 Public Policy**
  + Assure children have frequent & continuing contact w/ parents who act in their best interest
  + Provide a safe, stable, & nonviolent environment
  + Encourage parents to share rights & duties of raising their child after separation/divorce
  + **Note:** Ct can’t condition a conservator’s possession or access to a child on paying child support

Material & Substantial Change

* **Rule:** A change must be material & substantial *(Considine v. Considine, 281)*
  + **Facts:** TrCt followed rules of CivPro if no answer to a pleading 🡪 Failure to file an answer is sufficient proof of the claim in the pleading. Father disputes.
  + **Holding:** Family law exception 🡪 Don’t rely only on pleading. Must show material & substantial change. Used 3 prong test (now 2-prong)
* **Historical:** Strict 3-prong test
* **2-Prong Test** 
  + 1) Material change in circs when the order was entered **&**
  + 2) Circs are materially & substantially different now
* **§oL:** 3 years ???
* **Problem:** Difficult to establish if there was a prior agreement
* **Sua Sponte changes in Sole Managing Conservator**
  + **Rule:** Judge can’t change conservatorship sua sponte *(In the Interest of ABH & LNH,284)*
  + **301 TX RCP**
    - Ct judgment must be supported by pleadings
    - Issue not raised by the pleadings is tried by express/implied consent of parties like it had been raised in the pleadings
      * **Purpose:** Clearly appears from the record they tried the unpled issue
      * **To show consent:** Both parties understood the issue was in the case & a party failed to make a complaint

Relocation

* **Rule:** Relocation alone isn’t enough for a M&S change, but consider other factors to determine if it is *(Bates v. Tesar, 265)*
* **Factors**
  + Distance
  + Quality of relationship & nature of contacts bw non-custodial & child
  + Deprive non-custodial parent of meaningful & regular access to child
  + Impact on the quantity & quality future contact
  + Motive or motive for opposing the move
  + Feasibility of continuing relationship w/ visitation
  + Proximity & availability to travel
* **JMC vs. SMC**
  + JMC 🡪 JMC presumption applies only at divorce, not modification
  + One parent has SMC 🡪 JMC presumption is improper

Parental Alienation

* **Definition:** Substantial change that can support modification *(Chandler v. Chandler, 277)*
* **Applies**
  + Insufficient attention, hostility, remarriage, mistreatment
  + Threats to keep child from other parent,
  + Repeated changes in child’s home environment
  + Poisoning of child’s mind against other spouse
  + Keeping gifts from the other parent intended for the child away from child

Financial Changes

* *See below*

Modification w/in 1 year

* **Rule:** Must show change since date of the order or settlement *(Mobley v. Mobley, 287)*
* **§156.102 Modification of Exclusive Right to Determine Primary Residence of Child w/in 1 year of Order**
  + If filed w/in 1yr after the earlier of: order **or** settlement date, **π must attach an affidavit, that alleges:**
    - Environment endangers physical health or significantly impairs emotional development **or**
    - Person w/ exclusive right to designate the child’s primary residence:
      * Seeks or consents to modification & *best interest* **or**
      * Voluntarily relinquished child for 6+ months & *best interest*
    - **Doesn’t apply:** To person w/ exclusive right to designate child’s primary residence & but is in military ???\
    - **Rule:** Affidavit req’t is limited *(Ellason v. Ellason)*
* **Upon review of an already modified order** 🡪 Start w/ modified order

Calculating Child Support

**§154.062 Net Resources**

* + - * + **Includes**

Wage, salary, tips

Interest, dividends, royalty

Self-employment income

Net rental income **&**

Any other income (retirement benefits, ets)

* + - * + **Doesn’t Include**: Return of principal, accounts receivable, Fed assistance benefits
* **§156.404 Net Resources of New Spouse** *(In re Knotts, 336)*
  + Can’t add new spouse’s net resources to obligor/obliges net resources to calculate a modified child support
  + Can’t subtract new spouse’s needs from net resources (or dependent of new spouse) unless appropriate EX: Pre-nup
* **§101.010. Disposable Earnings** 
  + **Definition:** Post-deduction Earnings
  + **Includes:** Union dues, nondiscretionary retirement contributions, medical, hospitalization, & disability insurance for obligor & their children
* **§ 101.011. Earnings**
  + **Definition:** Payment to or due an individual, regardless of source & how denominated
  + **Includes:** Periodic or lump-sum payment for:
    - Wages, salary, independent contractor compensation , overtime, severance, commission, bonus, & interest income
    - Payments from pension, annuity, workers’ comp, disability, retirement program, Unemployment benefits.
* **Alternative Ways to Establish Net Resources**
  + Unstable income 🡪 Can average over 2 yr period *(Norris)*
  + Former Income *(Bertram)*
  + Net resources over several months *(Ikard)*
  + TrCt doesn’t have to accept every piece of evidence as factual/persuasive (high discretion to determine credibility)

Minimum Wage

* **§154.068 No evidence of wage & salary** 🡪 Ct can presume it’s fed minimum wage for a 40-hour week *(In re Martin)*
* **Fairness:** If you make less, show it. If you have a professional job, your potential may be above the Fed min wage.

Child Support that Exceeds the Guidelines

* **§154.123 Additional Factors to exceed/change child support guidelines**
  + Child’s age & needs
  + Ability to contribute
  + Financial resources available
  + Time of possession of & access to child
  + Obligee's net resources
    - Earning potential if income is significantly less bc intentionally unemployed/underemployed **&**
    - Change in income **or**   
      income attributed to property & assets
  + Child care expenses to maintain gainful employment
  + Managing conservatorship or actual physical custody of another child
  + Alimony or spousal maintenance actually & currently being paid/received
  + Child’s education expenses beyond secondary school
  + Car, housing, or other benefits from employer, another, or a business entity
  + Other income deductions & compensation for personal services
  + Health insurance & uninsured medical expense payments
  + Special or extraordinary educational, health care, or other expenses (of parties or child)
  + Travel costs
  + Income/loss from property (includes business, investments)
  + Debts or debt service assumed
  + Other best interest reasons (consider parents circs)

Multiple Children in Multiple Households

* **§ 154.129. Alternative Method of Computing Support for Children in +1 Household**

Obligor’s Resources Exceed Child Support Guidelines

* **Rule:** Deviate from the guideline amount 🡪Ct can order support that exceeds the presumptive amount **or** the amount of proven needs. Ct should be clear how much & when it should be paid  *(Warren v. Warren)*
* **Double Recovery:** Not allowed
* **Limit:** Can’t go over the needs of the child
* “**Needs” of a child:** Family income level. Varies by family.
* **§154.123** Ct may order periodic child support payments diff from the guideline amount *(Dennis v. Smith)*
  + **Requirements:** Evidence rebuts presumption that guidelines are in child’s best interest **&** Justified *(see factors above)*
* **§154.061 Computing Net Monthly Income** (to determine obligor’s resources)
  + [Annual gross income ÷ 12] − [Fed & SS Tax] − [Other mandatory expenses (EX: Retirement plan)] = NET RESOURCES
  + Use this formula to find child support amount **All we need to know !!!**
* **§154.125 Application of Guidelines to Net Resources** (Max)
  + Not greater than $7,500 **or** adjusted amount under (a)(1), whichever is greater
  + Adjust for inflation every 6 yrs
* **§154.126** May pay an amount equal to but not greater than 100% of child’s proven needs

Unemployment/underemployment

* **§154.066 Intentional Unemployment or Underemployment**
  + Obligor’s actual income is significantly less than potential earnings 🡪 Ct may apply the support guidelines
  + **Rule:** Intent to avoid child support isn’t a req’t to establish underemployment *(Iliff v, Illif)*

Modification of Child Support, Generally

* **Common Modification of Support Arguments**
  + Evidence of the children’s needs that have M&S changed
  + Evidence of mom or dads needs
  + Arguments re possession & payments made if exceeded Ct decree
  + Voluntary unemployment/underemployment
* **Considerations**
  + Ct must consider a material and substantial reduction in obligee’s income
  + Ct may consider voluntary unemployment/underemployment *(Tucker v. Tucker, 302)*
    - Underemployment 🡪 Usually not M&S change
  + Ct can’t consider gifts toward support obligation (even if substantial)

Decrease in Child Support

* **Requirement:** Factual determination of a material & substantial change in circs
* **May Apply:** Voluntarily underemployed 🡪 Consider potential income
* **Doesn’t Apply:** Payor goes to jail 🡪 Not req’d to decrease support payments Crime may be unrelated to assets

Decreasing when Support is Above the Guideline Level

* **Rule:** Ct may consider assets other than income when considering a decrease in child support to the guideline level *(Clark v. Jamison, 294)*
* **BoP:** Requestor
* **§154.067 Deemed Income** *(above)* - Ct can liquidate assets to pay child support, if you don’t have current income
* **§154.006 Intentional Unemployment/Underemployment** *(above)*
* **§156.068 Wage & salary presumption** *(above)*

Increasing Child Support

Earning Potential

* **Rule:** Can average net resources over 2 yrs if have earning capacity/potential when unemployed *(Norris v. Norris, 306)*
* **Rule:** Child support can be increased w/out modifying possession

Changed circumstances

* **Rule:** Changed circs bw time of divorce & appeal are basis for judging M&S changes in circs *(London v. London, 315)*
* **Doesn’t Apply:** Intervening complaint
* **BoP:** Movant
* **Evidence req’d:** Children’s needs changed or the parents circs changed
* **Failure to challenge**: Waives on appeal EX: Failed to raise complaint w/ timely objection in TrCt
* **Rule:** Ct req’d to make findings of fact & conclusions of law that usually aren’t combined *(London v. London)*
  + Jury can’t set child support **!!!**
  + More weight is given to a jury’s findings (vs judge)
* **Limited Appeal:** Appeal on a limited record

Automatic Increase in Child Support

* **Rule:** Automatic increases in child support 🡪 Generally unenforceable **!!!**
* **Exception:** Unless supported by a future event that will trigger a material & substantial change *(Starck v. Nelson)* **!!!**

Exceptions

* **K Provision for Automatic Increase**
  + **Rule:** Parents make K for future increase in child support based on certain future event **&** in child’s best interest 🡪 Automatic increase allowed. May be ordered to perform *(In re DS)*
  + **K Limitations**
    - Request to modify 🡪 Ct can modify if in child’s best interest
    - K provision that’s not in child’s best interest 🡪 Ct can strike that provision
    - K deprives Ct of jsd over child support 🡪 Invalid
    - K conflicts w/ § 🡪 General rule of the § controls (re best interest) *(Beyers v. Roberts)*
* **Other Reasons to Automatically Increase**
  + **May Apply:** Receiving an annuity, graduating from medical school EX: Choose fellowship rather than practice
  + **To establish:** Look to net resources & change in circs
  + **Don’t Consider:** New spouses income, needs, expenses
  + **BoP:** Party seeking increase
  + **Effect on BoP:** Burden shifts

Recouping Child Support Paid Under Reversed Order

* **Rule:** AG can step in to collect arrearages for failure to pay child support. AG stands in obligee’s shoes *(In re AM & BM)*
  + Ct decision 🡪 Not a material & substantial change in circs
  + During appeal 🡪 Most Cts refuse to suspend child support obligation
* **§154.012** Can apply past extra payments to future obligations, but takes $ from kids
* **§154.013** Obligation to pay support doesn’t end when obligee dies

Defenses to Enforcing Child Support

* **§157.008 Affirmative Defense to Motion for Enforcement of Child Support**
  + Obligor may raise affirmative defense to modify enforcement of child support that obligee voluntarily relinquished
    - * Relinquishment in excess of ordered possession **&**
      * Actual support supplied by obligor **!!!**
  + May plead an affirmative defense to contempt or violation of community service bc obligorEX: In jail
    - * Unable to pay support **&**
      * No property to sell to raise the funds **&**
      * Unable to borrow funds **&**
      * No known way to get it
  + **Obligor overpaid when providing support** 🡪 Can request reimbursement or offset Not both!
    - **To Establish:** Spending = offset or reimbursement
    - **Limit:** Amt of payments previously ordered
    - **Applies:** Supposed to pay child support, but took care of them instead

Retroactive child Support

* **§154.131 Retroactive Child Support (done)**
  + Ct shall consider net resources during relevant period and:
    - If mom had made any previous attempts to notify obligor or paternity/probable paternity
    - He knew of probable paternity
    - Will it cause undue hardship on obligor or his family
    - Whether he’s provided support in the past
  + Presume Ct ordered retroactive child support in last 4 years is reasonable
  + Can rebut presumption by:
    - Knew/should have known he was the father **&**
    - Avoided paying
  + Ct retains jsd until child is 22

Mediation Settlement Agreement (MSA)

* **NOT ON EXAM !!!**
* **Mediation Basics** (Beyers v. Roberts)
  + Confidential discussions (\*most important part)
  + Unsuccessful mediation 🡪 Can’t use discussion at subsequent trial
* **Purpose:** Helps clients speak candidly w/ atty & mediator w/out disclosure to other side unless permission given to mediator
* **CPRC 154.002** TX policy support SAPCR mediation
* **§154.023 Mediation**
  + Forum where impartial person facilitates communication bw parties to reconcile
  + Not litigious, but conciliatory terms
  + Mediator must be impartial EX: “What do you think will happen?” 🡪 Don’t answer
* **§6.602** To dissolve marriages/divorces
  + Specific provisions for mediation procedure
  + Binding MSA is very powerful. Not subject to revocation. (lists specific req’ts)
    - Entitled a judgment & abuse of discretion for TrCt to alter, change or add the terms if meet § 6.602 req’ts
* **§153.007** ADR in SAPCRS
  + Same effect as MSA
  + Can object to mandatory MSA if decision impaired bc family violence
  + Local Rules: Disputed custody or visitation (temporary orders) 🡪 Ct can order you back to mediation b/f final orders
* **§153.0071 Alternate Dispute Resolution Procedures**
  + Best interest hearing not req’d before entering an MSA order
* **§154.054** Ct can tax mediator’s fee as Ct costs. Affects settlement & negotiation strategies

# TerminatiNG Parental Rights

* **NOT ON EXAM !!!**
* **How Termination Arises**
  + Private termination bw one parent & the other EX: Step-parent adoption
  + Intra-family, to terminate rights of culpable parents
  + Adoption agency to facilitate tan infants adoption EX: Child w/o presumed father
  + State intervenes to terminate allegedly culpable parents EX: Abuse or neglect
* **Effect of Termination Decree:** Complete, final, irrevocable & divests natural & legal rights, privileges, duties & powers except child’s right to inherit
* Pregnancy after criminal act 🡪 Ground for termination

Voluntary Termination

* **Advantage:** Most prevalent & least controversial means of terminating parental rights
* **Who can establish**
  + Adoption agency, unknown father, parent voluntary relinquishes
  + Signed affidavit by mom/dad,
    - **Common:** Step-parent adopts kids of new spouse
    - **Affidavit of waiver interest in child**: Gives alleged father way out w/o having to prove paternity
  + Before you can adopt 🡪 Biological parents rights must first be terminated

Involuntary Termination

* **2-step process to terminate parental rights !!!**
  + 1) Satisfy 1 of the 19 courses of conduct
  + 2) Termination must be in the best interest of the child
* **Standard of Proof:** Clear & Convincing evidence (bc fundamental right to raise your children)
* **Standard of Review:** Strict Scrutiny (heightened standard)
* **Applies:** Mentally ill parent, attempt abortion but baby born alive, *see 19 conducts below*
* ***Holly* Best Interest Factors**
* - Desires of the child
* - Emotional & physical needs of the child now & in the future
* - Parental abilities
* - Available programs to assist them in the best interest of the child
* - Plans for child or by agency seeking custody
* - Stability of the home
* - Acts or omissions
* - Excuse for acts or omissions
* **§161.001 Involuntary Termination of CP Relationship The 19 Courses of Conduct**
* **1) The parent has done one of these 19 factors: &**
* - (A) Left child w/ expressed intent to not return
* - (B) Left child for <3 months w/out leaving adequate support (left w/ non-parent)
* - (C) Left child for <6 months w/out leaving adequate support (left w/ parent)
* - (D) Knowingly left child in danger/emotional dangerous place
* - (E) Engaged or left child w/ someone dangerous/or emotionally dangerous
* - (F) Failed to support child for 1 yr (w/ 6 months of filing)
* - (G) Abandoned w/ no identification & can’t easily identify child
* - (H) Voluntarily abandoned pregnant mom &
  + - * Failed to support or provide medical care for mom &
      * Remained apart or failed to support child after birth
* - (I) Contumaciously refused to submit to a court order (§261)
* - (J) Fail to enroll kid in school **or** Child’s absence from home w/out parent consent for a long time or no intent to return
* - (K) Affidavit relinquishing parental rights
* - (L) Convicted or placed on supervision for the death or serious injury of a child
* - *Includes:* homicide, manslaughter, sexual assault, child pornography, etc
* - (M) Terminated relationship by another state
  + - (N) Abandoned child who was in DPRS conservatorship **&**
      * Dept reasonably tried to return the child
      * No regular visits/insufficient contact
      * Inability to provide the child w/ a safe environment
    - (O) Failed to comply w/ Ct order establishing guidance to return child who was in DPRS permanent/temp managing conservatorship
    - (P) Used a controlled substance endangering the child &  
      continued to use it after counseling
    - (Q) Conviction of an offense **&**
      * Confined or imprisoned **&**
      * Unable to care for the child for not less than 2 yrs since filing
    - (R) Caused child to be born addicted to alcohol or illegal drugs
    - (S) Voluntarily took child to EC provider w/out expressing intent to return
    - (T) Convicted of murdering other parent **or** Criminal attempt **or** Criminal Solicitation
* **2) Termination is in the best interest of the child**

Jury Charge Error -- Not Fundamental

* **Rule:** Jury charge error is not fundamental. Can’t be raised on appeal. *(In re JFC, ABC, & MBC)*
  + **vs. Fundamental Error** 🡪 Error must rise to the level of public interest (not necessarily const grounds) 🡪 Can raise it **w/o preservation**. Usually SMJ cases bc Ct couldn’t render decision if no SMJ.
* **Jury Trial 🡪** Don’t have right to findings in jury case
* **Bifurcated Trial 🡪** May request your findings in Ct record to show error (*Purpose:* Establish termination is in the best interest)
* **BoP:** State w/ C&C evidence. Parents should have objected to the jury charge.
* **3 factors to consider in Termination Proceeding**
  + Private interest affected by the proceeding
  + Risk of error from chosen procedure
  + Gov’t interest

Motion for New Trial

Doesn’t extend Deadline for Accelerated Appeal SAPCR Termination Cases

* **§109.002 Appeal** *(In re KAF)*
  + SAPCR suit to terminate parental rights 🡪 Accelerated on appeal
  + **Timeframe: Must file notice w/in 20 days after judgment or order !!!** *Normally 30 days*
    - Applies: Original or modified judgment *See below*
  + Motion for new trial 🡪 Doesn’t extend appellate deadline in termination cases *It does in other cases*

Does Extend Plenary Power: Entry of New Judgment Allowed

* **Rule:** AppCt can take judicial notice of new evidence (such as expert opinion) if it won’t cause reasonable dispute *(In re JL)*
  + **Applies:** Any change, whether or not material or substantial, made in a judgment while TrCt retains plenary power 🡪 Restart the appellate timetable (20- days, *see above)*
  + **Doesn’t Apply:** Request for findings of fact but does affect plenary power.

Estoppel, TX DPRS, & Termination

* **Rule:** Motion for summary judgment must be supported by the pleadings *(In re SAP)*
* **Estoppel**
  + **Doesn’t Apply:** Gov’t entities
  + **Purpose:** Protect innocent persons, not those w/ unclean hands

Incarceration

* **Rule:** Incarceration alone is insufficient to terminate parental rights *(In re AV & JV)*
* **Rule:** Best interest = 2 yrs from date of sentencing. No retroactive application unless best interest
* **§161.001(Q)** Can terminate parental rights if ∆ knowingly engaged in:
  + Conviction of an offense **&**
  + Confinement or imprisonment **&**
  + Inability to care for the child for not less than **2 yrs** from the date of filing

Right to Effective Assistance of Counsel

* **§107.013(b)** Indigent parents who are ∆’s in same termination suit 🡪 Entitled to non-conflicted counsel. Can’t have terminations set aside on jury grounds *(In re BLD & BRD)*
* **Test**
  + Conflict of interest *bw parents* opposing termination?
  + Substantial risk atty’s obligations to one parent will materially & adversely affect his obligations to the other parent?
* **Remedy:** Joint custody if no conflict in the case

Molestation

* **Rule:** May terminate parental rights for causing death or serious injury to a child
  + Molestation is serious injury *(In re LSR)*
* **§161.001(1)(L)(iv)** May terminate parental rights if parent engaged in indecency w/ a child

Acts Underlying Termination Occurred Prior to Knowledge of Parental Status

* **Rule:** Knowledge of paternity not req’d to terminate under (e) but is req’d under (d). *(In re S)*
* Persuade jury w/ C&C evidence dad endangered child 🡪 Can terminate

Conclusory Statements

* **Rule:** Conclusory statements insufficient to terminate a parents rights (bc child’s best interest to fully develop evidence *(Williams v. Williams)*

# EstablishING PC Relationship, Paternity Registry, Asst Reproduction, & Adoption

**§160.607 Procedures for Rescission**

**§160.608 Challenge After Expiration of Rescission**

**§160.309 Procedure to Challenge**

**§160.512 Offense: Falsified Specimen**

**§160.607 No Time Limit: Child having NO Presumed Father** May commence at any time (even after child is adult)

**§160.607 Time Limit: Child having Presumed Father**

- Must adjudicate w/in 4 years after birth

*Unless (Ct may allow)*

- Presumed mom & dad didn’t live together or have sex

- Couldn’t bc mom made misrepresentation

**§160.608 Authority to Deny Motion for Genetic Testing**

**§160.609 Time Limit: Child w/ Acknowledged or Adjudicated Father**

Paternity Registry

* **Rule:** Dad didn’t register, asserts DP violation bc no notice or hearing. ~~Ct uses DP analysis (nature of interest & whether substantial rlshp). Ct says must have substantial relationship (biology insufficient)~~ *(Lehr v. Robertson)*
* **Dissent:** DP requires at least notice & opportunity to be heard (*Professor agrees. Outcome was too result-oriented)*
* **§160.402 Paternity Registration TX has a paternity registry**
  + **Requirement:** Must register or before child is 1 month old  **§oL:** 31 days
  + **Purpose:** Cut off biological father’s paternity rights asap to facilitate adoption
  + **Effect:** Father entitled to notice of adoption or termination of parental rights when:
    - In registry **or**
    - Father-child relationship established **or** *even if he didn’t register (DP)*
    - Commences proceeding to establish his rights to the child *even if he didn’t register (DP)*
  + **TX § safeguards which protect against the *Lehr* outcome:** Fundamental right 🡪 Ct must hold form over substance

Biological vs. Presumed Father

* **Rule:** Presume the child is the child of the marriage, but it can be rebutted but C&C evidence *(In the Interest of JWT)*
* **Basis of Paternity**
  + Parents married at time child born 🡪 Presume they’re the parents
  + Married at time of challenge 🡪 Even stronger presumption
  + **~~Lord Mansfield’s Rule:~~** ~~Prohibited H & W from testifying lack of access (old evidentiary rule, overturned)~~
* **§160.204 Presumption of Paternity**
  + Father is presumed to be father if:
    - Married when child born
    - Married & child born w/in 301 days after marriage ends
    - Married before the birth (even if marriage is invalid)
    - Married mother &  
      asserted paternity &…….there’s more

Equitable & Statutory Estoppel to Deny Paternity

* **Elements of Equitable Estoppel** *(Hausman v. Hausman)*
  + 1. False representation or concealment of material facts **&** EX: Lie about father-child rlshp, Conceal affair
  + 2. Made w/ actual or constructive knowledge
  + 3. To a party w/out knowledge, or the means of it
  + 4. w/ intent it be acted upon **&**
  + 5. Reliance on misrepresentation to their prejudice

In Vitro Fertilization

* **Rule:** K analysis. Valid if agreements allow for the right of either party to change their mind *(Roman v. Roman)*
  + Marriage dissolved before implantation 🡪 Former spouse not parent unless they consent to post-divorce implantation

# More on Grandparents Rights

* **Possession** = Visitation
* Both parents dead 🡪 Ct can consider a parent, sister, brother of parent as a managing conservator. Ct has absolute discretion.
* A biological or adoptive grandparent may request access or possession by filing an original suit or a suit for modification. Can file a suit w/o regard to whether there was an issue over managing conservatorship.
* **§ 102.003 Standing**
  + **For an Original Suit**
    - Parent, child w/ representative, custodian or Ct-ordered visitation right, guardian or child or child’s estate, gov’t, alleged father, Adoptive parent (see §160),
    - Non-foster parent who had actual care, control & possession of child for 6+ months w/in 90 days of filing
    - Managing conservator in revoked affidavit
    - Person that child & their guardian, managing conservator, or parent lived w/ for 6+ months w/in 90 days of filing **&** guardian dead when filed
    - Foster parent for 12+ months w/in 90 days of filing
    - Relative w/in 3rd degree of consanguinity **&** child’s parents dead
    - Prospective adoptive parent in writing **by** a pregnant woman (irrelevant whether child born yet)
  + **Time Computation for Standing**
    - Not req’d to be continuous & uninterrupted but consider child’s principal residence before suit
    - Foster parent can file any time after approved for adoption
* **§ 102.004 Standing for Grandparent or Other Person**
  + is for managing conservatorship
  + is for possessory conservatorship
  + **Requirements**
    - Order necessary bc child’s present circs would significantly impair their physical health or emotional development **or**
    - Both parents, surviving parent, or managing conservator or custodian: filed the petition **or** consented to the suit.
  + Can’t file original suit requesting possessory conservatorship
    - **But** Ct can grant someone w/ substantial past contact w/ child leave to ***intervene in a pending suit***if proof that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child’s physical health or emotional development.
* **§ 102.0054 Standing for Sibling**
* **§ 102.006 Limits on Standing**
  + iIf PC relationship w/ both parents terminated, an original suit may not be filed by:
    - Parent whose relationship terminated
    - Father **or**
    - Family member of parent whose relationship terminated
  + **Doesn’t Apply**
    - Someone w/ continuing right to possession of or access to the child by court order **or**
    - Consent from child’s managing conservator, guardian, or legal custodian
    - Adult sibling, grandparent, aunt or uncle if w/in 90 days after termination filed
* **153** Only applies to biological or adoptive grandparents, so step-grandparents lack standing + don’t meet specific standing req’ts
* **§ 153.431 Appt of Grandparent, Aunt, or Uncle as Managing Conservator**
  + **Requirement:** Both parents dead
* **§ 153.432 Suit for Possession or Access by Grandparent**
  + May request in original or modification suit
  + Even if managing conservator not an issue
  + **Requirement:** Denial would impair the child’s health or well-being
* **§ 153.433 Possession of or Access to Grandchild**
  + May order if:
    - 1+ biological or adoptive parent hasn’t had rights terminated **or**
    - Grandparent overcomes presumption that parent acts in best interest (by preponderance) **or**Denial would significantly impair child’s health or emotional well-being
    - Biological grandparent of parent who:
      * Incarcerated w/in 3 months
      * Ct found incompetent
      * ,,.
* **§ 153.434 Limit on Right to Request Possession or Access**
* ***Troxel:*** Failed to give deference to moms opinion. Must show parent unfit
* **Holding:** Re-affirmed *Troxel* but said burdens on grandparents to show the child’s health or emotional well-being would suffer by not visiting grandparents *(In re Mays-Hopper)*
* **Rule:** Grandparents seeking visitation must overcome presumption that a fit parent acts in best interest of the child (preponderance) *(In re Derzapff)* **!!!**
* **To Rebut:** Must assert that denying access to grandchildren would be physically & emotionally harmful to child **!!!**
* **Rule:** Violates DP to not allow a parent their fundamental right to notice & an opportunity to be heard re: Ct-ordered visitation by a non-parent (ie grandparent) *(In re Chamberless)*

Insufficient Evidence to Overcome Parental Presumption

* **Rule:** Ct can’t infringe on parents fundamental right to make child rearing decisions simply bc it believes a better decision could be made. Parents have right to limit visitation. *(In re Scheller)*
* **Guardian ad litem**
  + **Rule:** In SAPCR, Ct may appt a psychologist to evaluate & make recommendations to the Ct about the best interest of the child
  + Expert psychologist can be guardian *ad litem*
  + Guardian ad litem & atty for child 🡪 TX allows. Clients wishes might not be best interest
    - Not allowed in many jsds
  + \*discussed § w/ def of guardian ad litem

# UCCJEA & UIFSA

Uniform Child Custody Jsd Enforcement Act (UCCJEA)

* **Purpose:** Clarify & unify standards for jsd in **interstate child custody** or **visitation issues**
* **Effect:** Grants exclusive continuing jsd to state that made the initial custody order (Prioritizes home state)
* **Applies:** Child custody & visitation issues in interstate cases
* **Key:** Whether it’s original or modification (continuing jsd) §152.202
* **Effect:** 2 states can have jsd to modify custody [home state rules, original determination state has cont. jsd]
* **Replaced:** UCCJA, which didn’t prioritize home state.
  + **PKPA** 
    - Created to resolve this UCCJA issue
    - Required states to accord FF&C to custody decrees issued by sister states
    - Authorizes continuing jsd in state that issued the original decree
* Chapter 152
* **Purpose**
  + Avoid competing Ct orders (same children & family)
  + Discourage the use of the interstate system…
  + Promote uniformity
  + …

4 Bases of Jsd (in order of Priority)

* **1. Home state**
  + Child lived w/ a parent for 6+ months immediately before commencing the proceeding **or**
  + Home state of the child for 6+ months (before & child absent from state ??)
* **2. Significant Connection**
  + **Requirement:** More than mere physical presence
  + **Consider:** Relationship w/ family, Own home, Roots in the area
* **3. More appropriate forum**
  + TX Ct may assume jsd if Cts w/ jsd under home state r sig connection sections decline to exercise jsd bc TX is the more appropriate forum
* **4. Default jsd**
  + If no Ct of another state has jsd under the first 3 bases
  + §152.201(a)(4)
  + **Comity**
    - **Rule:** Lack of comity w/ respect to custody decrees of other states is a mischief of law

Analysis

* + UCCJEA adopted by all states
  + When first parent filed, did another Ct have jsd?
  + SMJ for custody? *See §152.001-.317*
  + Look to jsd based on circs when suit filed
  + Look to 4 bases of jsd, defining home state (lived = physical presence)
  + Who filed suit first?
  + Were they in that state for 6 months?

Uniform Interstate Family Support Act (UIFSA)

* **Applies:** Child support collection issues in interstate cases
* **Purpose:** Similar to UCCJEA…. See code
* **159.205(a)(1) UIFSA governs jsd bw states involving child support**
  + TX Ct issuing a support order consistent w/ TX law has continuing, exclusive jsd over a child support order:
    - As long as TX remains the residence of the obligor, the individual oblige, or the child for whose benefit the support order is issued
* **Residency**
  + **Rule:** Physical presence in a county + good faith intent to remain permanently & definitely make that county ones home
  + Not defined in UIFSA, *use cases above*

If Home State isn’t Clear

* **Rule:** Parent’s intent not determinative – temporary claims irrelevant. Physical presence based on facts – just need child to be in state for 6 months *(Powell v. Stover)*
* **§152.201 Initial Child Custody Jsd**
  + **Home State:** On date of proceeding **or** lived w/in 6 months & child absent from state (objective)
  + **Requirements to end Jsd** *(In re Fountain)*
    - Significant connection **&**
    - Substantial evidence
      * **Consider:** Care, protection, training, & relationships
* **§152.102** Home state defined
* **§152.208** Person seeking jsd engaged in unjustifiable conduct 🡪 Can decline jsd
* Court can decline if another state is more convenient (childrens’ custody cases would be split)

Significant Connections to TX Support Exclusive, Continuing Jsd

* To maintain jsd 🡪 Ct must determine that neither child nor parent have significant connection w/ state (no evidence in state and no one resides in state)
* **Rule:** §152.201 requires a significant connection & substantial evidence *(In re Fountain)*

Registration of an out-of-state Support order

* **Rule:** 2 competing orders 🡪 Home state wins. Once registered, support order enforceable in same manner & procedures as an order issued by a TX Ct *(Ellithorp v. Ellithorp)*
* **8 Defenses to Contest an Order**
  + Ct lacked personal jsd
  + Fraud
  + Order vacated, modified, suspended
  + Order stayed, pending appeal
  + Defense in this state to the remedy
  + Full or partial payment made
  + §oL precludes enforcement
  + Not the controlling order
* **§159.207(b) Priority [when 2+ child support orders]**
  + Only 1 Ct has continuing, exclusive jsd 🡪
  + +1 Ct has it 🡪
  + No Ct has it 🡪 1st in time wins **!!!**

Interstate or Intrastate?

* ***In re Caesar***
  + **Facts:** mom wants modified child support. Dad wants to transfer bc mom moved to Tenn & he moved to Galveston. TX retains jsd, just a diff county. Custody stays in state until loss of a significant connection & no substantial evidence
* **§155.301 Authority to Transfer**
  + Ct w/ continuing, exclusive jsd must transfer if:
    - Resident party is a party of TX **&**
    - All other parties (including child) reside outside TX
* **§159.205**

# Termination of Parental Rights Problems

Problem #1 from in re mc

**Best Interest of the Child? Use *Holly* Factors**

- Mom sells drugs from home

- Has been arrested: Children at risk of being displaced

**Met 1 of the §161.001 Factors?**

- (D) Knowingly left child in danger/emotional dangerous place

* + - (E) Engaged or left child w/ someone dangerous/or emotionally dangerous

Problem #2

**Best Interest of the Child? Met 1 of the §161.001 Factors?**

**DAD** - (D) Knowingly left child in danger/emotional dangerous place

* **MOM** (D) Knowingly left child in danger/emotional dangerous place
* (E) Engaged or left child w/ someone dangerous/or emotionally dangerous

Problem #3

**Best Interest of the Child? Met 1 of the §161.001 Factors?**

* - (D) Knowingly left child in danger/emotional dangerous place

- (E) Engaged or left child w/ someone dangerous/or emotionally dangerous

Problem #4

**Best Interest of the Child? Use *Holly Factors***

**-** Parental abilities

**Met 1 of the §161.001 Factors?**

* + - (P) Used a controlled substance endangering the child &  
      continued to use it after counseling
    - (R) Caused child to be born addicted to alcohol or illegal drugs
    - (C) Left child for <6 months w/out leaving adequate support (left w/ parent)
    - (N) Abandoned child who was in DPRS conservatorship &  
      dept reasonably tried to return the child  
      no regular visits/insufficient contact  
      inability to provide the child w/ a safe environment

Problem #5

**-** Should proceed under §161.002(b) Ct App said dad had knowledge of the child but didn’t come forward to do anything to protect his interest to being a father, therefore he could not be prejudiced by the mother giving the child up for adoption.

**160.402 Failure to Register | 160.404 Deals w/ Registry**

**Best Interest of the Child? Met 1 of the §161.001 Factors?**

* - (H) Voluntarily abandoned pregnant mom & Failed to support or provide medical care for mom & Remained apart or failed to support child after birth

# Practice Problems

Lilly & Paul

* **First, address the paternity issue.**
  + First, parentage of the father must be established. A court can’t order someone who is not a parent to pay support. Here, paternity is not presumed because the couple was not married. There is no statute of limitations on denial of paternity for a father not presumed. The mother is presumed to have standing to get a Court order for genetic testing because maternity is presumed. Thus, assume paternity has been established. The proper party for establishing paternity is xxxx.
* **Second, address support based on paternity not having been established**
  + Ct can apply the federal minimum wage standard, based upon a 40-hour work week unless there is other evidence to rebut that presumption. There is evidence that he is intentionally unemployed, because he is not working. Or, he may be considered to be underemployed because the $500 a month he receives from his live-in girlfriend was paid toward the sale of the property. This $500 can be considered because it is considered an asset from a business. However, the court may view his suspect sale of the barbershop, which he does not have proof of, as a sham to avoid child support.
  + A key determination will be whether he has a legitimate back injury. If he is faking the back injury, he has potential to earn the wages that he earned prior to the sale. However, if he is legitimately unable to work, his earning potential would be lower. The evidence provided, along with the weight of the evidence, whether it is credible or not will be considered in determining the earning ability and calculation of support.

The Germans

**Facts to Support Mom - What facts would you want in the record? *Think outside the facts on the problem***

- Rudi moved, and she followed, why not return to their country of citizenship

**Facts to Support Dad**

- Existence of a Joint Custody agreement & *Parenting Plan*

- The agreement expressed both parties intent to restrict the boys residence to Texas

- Father is currently close to the children- visitation would be nearly impossible / irregular if they move overseas

* + **§156.101 Modification of Order Establishing Conservatorship or Possession & Access [2-prong test]**
    - Best interest of the child & material and substantial circs **or**
    - Best interest of the child & child that’s at least 12 expressed a preference **or**
    - Voluntary relinquishment

**1) First consider what “best interest” means**

**-** Apply best interest factors of conservatorship from *Holly*. They can also be used to consider support.

**2) Next consider what constitutes a material & substantial change in circ**

*Mom:*

- Kids are young, they will adapt to the move

- Mom can testify that she has more family support in German (perhaps more there) [best interest]

- The kids may even be closer to dads family in Germany [best interest]

- Mom could testify that her financial circs &/or job prospects would be better in Germany

- Cultural heritage is important, the children identified themselves as German even here (played German games, language, etc)

- Consider possibility that Dad travels for work, may be able to visit

*Dad: What helps in his effort to keep the kids in Texas?*

- Mom’s motivation could be self-interest, rather than the best interest of the children

- Kids have a relationship w/ the father, emotional damage

- State has an interest in the kids, can’t monitor from so far away

- Expert W could testify about the psychological impact

- These facts are from *Lens v Lens* 79 SW.3d 10 TX Sup.Ct 2002.

# Practice Exam #1

Practice Exam Question 1

* **Case:** *In re RKF.* 2012 Westlaw 360800 (TX)
* **Mom contests:**
  + **1) TrCt’s order delegating Dads possession & access rights to the child**
    - **§153.433 Possession of or Access to Grandchild**
      * Step-grandmother 🡪 Not in class of relatives who have standing 🡪 Ct doesn’t have jsd. Thus, Ct doesn’t have discretion to hear facts of her position
      * Grandfather 🡪 May have standing for access to the child, but he must overcome presumption that biological parent will act in best interest of the child
  + **2) Argues TrCt erred in granting Dad’s father & stepmother the right to exercise Dad’s custody right**
    - * No duty or obligation for nonparent to pay support
        + Ct can’t order grandparents to pay for moms transportation to see dad
        + ok to order parent, but not nonparent
* **Dad argues incarcerated & can’t pay support**
  + Dad may be able to argue for modification of support based on a material & substantial change in circs
  + Dad may argue he was involuntarily unemployed
    - But that doesn’t mean you can’t pay child support bc you could still have assets
    - It’s a determination for the TrCt
* **Modification of Custody**
  + Must show substantial & material change in circs to modify
  + But it makes no since to give dad greater possession than he had before, since he is now incarcerated

Practice Exam Question 2

* **Case:** *In re JMT.* 280 S.W.3d 490 CT-App
* **Paternal Grandparents object to the TrCt order granting maternal grandparents possession of the child.**
  + Prior to termination of parental rights, the maternal & paternal grandparents are essentially in an equal position
  + After termination, there is a diff foundation & the *Troxel* standard applies
  + Paternal grandparents had care, custody, and control of the child for a substantial time, approx. 3 years
    - Paternal grandparents named as adoptive parents
      * This created a presumption that they acted w/in the best interest of the child
        + Maternal grandparents would have to overcome the presumption by showing they were unfit **or**
        + That denial of the possession or access would significantly impair the child’s emotional health or well-being

There’s no evidence here to show the grandparents were denying access

* + - * + 153.434 Limitation on Right of Access

This is an additional § you could cite, that the grandparents could have raised

* + **Main Point of Question**
    - If 3P or grandparent contests against parent, there is a presumption they must overcome
    - Must demonstrate physical or emotional harm
    - Child’s sadness is insufficient

Practice Exam Question 3

* **Case:** *In re NLD.* 344 Sw3d 33 2011 CtApp Texarkana
* **Mother claims**
* Maternal great-uncle and paternal great aunt 🡪 abuse of discretion, didn’t have standing
* Paternal great aunt 🡪 She’s w/in the 3rd degree of consanguinity but still needs to overcome the presumption in favor of the paternal great-grandmother
  + She showed it because moms drug use
  + Also mom didn’t take the test when she was ordered by the court to do so
  + Mom abandoned the child on several occasions
  + Grandparents wanted legal possession so they could sign for child’s medical treatment
    - Plus, child had heart problem
    - Paternal grandma overcame the presumption & won the case

Practice Exam Question 4

* **Case:** *In re Russell.* 321 Sw3d 846CtApp**-**Ft Worth

# Practice Exam #2

* **Where a spouse engages in conjugal society or embraces other spouse w/ knowledge of ∆’s adultery, is the defense of:**
  + A. Collusion
  + B. Conciliation
  + **C. Condonation 🡪 §6.008(b) Primarily no longer used bc we have no-fault divorce**
  + D. Connivance
* **Define Putative Spouse in 3 brief sentences.** A putative spouse is a spouse that arises when there was a prior marriage and either one or both parties entered the relationship in good faith. **!!!**

Short Essay #1

* **Case:** Comes from *In re Natalie Zavala* 2010 WL 5407349 (Tex.App.-San Antonio)
* **ANSWER !!!**
  + Kansas has jsd bc it is the home state. The home state is where the child has resided for the preceding 6 months before the complaint was filed. The child lived in Kansas for the preceding 6 years, which is well over the minimum 6-month standard. The Ct should dismiss for lack of jsd. Kansas had original jsd & it’s continuous & exclusive jsd under the UCCJEA.
* **Full Analysis**
  + All states have adopted UCCJEA to handle interstate child custody and support issues
  + When dad filed in TX, no other state had jsd
  + SMJ for custody governed by 152.001-.317
  + Jsd is based on the circs at the time the suit is filed
  + 4 bases of jsd: home state, significant connection, more appropriate forum, default jsd
* **1. Home state** 🡪 Yep
  + Child lived w/ a parent for 6+ months immediately before commencing the proceeding **or**
  + Home state of the child for 6+ months (before & child absent from state ??)
  + Citing *Powell v. Stover* 165 S.W.3d 322, 326 (Tex. 2005), “lived” connotes physical presence, physical location
  + But. Did filed suit first
* **2. Significant Connection** 🡪 Nope
  + only use if no home state 🡪 not here **or**
  + home state denies jsd 🡪 not here
  + Substantial Evidence 🡪 Dad’s only evidence is that he resides in TX. No evidence of significant connection for the child
* **4. More appropriate forum 🡪** Nope

Short Essay #2: Bar Exam Question (see bar answer)

* + **Did the TrCt abuse its discretion in ordering Frank to pay $50K in retroactive child support?**
* First, address the provisions on retroactive child support. The first provision is that the Ct has authority to order retroactive child support. §154.009. Then, look at the specific provision under § 154.131. Go down the statute.
  + - * + **§154.131 Retroactive Child Support (done)**

Ct shall consider net resources during relevant period and:

If mom had made any previous attempts to notify obligor or paternity/probable paternity

He knew of probable paternity

Will it cause undue hardship on obligor or his family

Whether he’s provided support in the past

Presume Ct ordered retroactive child support in last 4 years is reasonable

Can rebut presumption if- Knew/should have known he was the father **&** Avoided paying

Ct retains jsd until child is 22

* + - * **§154.062 Net Resources** 
        + **Includes:** Wage, salary, tips. Interest, dividends, royalty, Self-employment income, Net rental income **&** Any other income (retirement benefits, ets)
        + **Doesn’t Include**: Return of principal, accounts receivable, Fed assistance benefits
    - **Establishing a presumption of paternity**
      * Born in wedlock **or** Born w/in 300 days of marriage **or** Held-out together **or… 🡪 No issue of paternity here**
    - Frank has already set a standard by paying child support
    - **Determining $ amount**
      * The Ct should consider family income level, which varies by family. Lump sum may be an abuse of discretion bc unreasonable to expect he would have that amount in savings. However Ct can’t exceed the guidelines. Frank’s resources don’t appear to exceed the guideline amount. If they do 🡪 Can’t exceed 100% of the proven needs of the child. Ct should be clear about the amount of support due and when. The Ct satisfied this req’t.
* **Standard of Review.** The Ct should uphold the TrCt findings unless there was clearly an abuse of discretion. There does not appear to be an abulse of discretion here. Therefore, uphold the TrCt findings bc there is a policy that the TrCt judge is in a better position to evaluate the unique circs of the case
  + **Look to §154.123 Additional Factors for Ct to Consider (to exceed/change child support guidelines)**
  + **Did the TrCt abuse its discretion by finding that Frank was intentionally underemployed?**
    - Ct can consider past pay in order to determine potential income
    - Ct can average past income. If no basis 🡪 can presume federal min wage for a 40 hour owork week (not the cas here)
    - Ct can consider Frank’s voluntary decision to attend classes, which caused his income to be substantially decreased. Even if Frank is attending classes to better himself & ultimately make more $, it doesn’t invalidate the minimum amount of potential income that he could pay for the benefit of the child. It could be considered voluntary underemployment

# Test Tips

* **Class**
  + Will send warning email 1 class before drop
  + Random recitation. Send her a message in advance if you won’t be prepared
* **Practice Exam:** Essay & MC question
* **Final**
  + **Part I: Short Essay**
    - Choose 4 out of 6 (15 points each)
    - Small paragraphs
  + **Part II: Short Answer**
    - Based upon §’ory definitions. Pay close attention to them **!!!**
    - Will come from the §’s
    - Won’t ask us to calculate support/crunch any numbers.
    - Just focus on substantive law
    - Max 3 sentences
  + **Part II: MC**
    - Will come from the §’s
    - 10 Questions worth 20 points
  + **General Notes**
    - Pts determined by rubric
    - Follow analytical process
    - No code
  + **Previous Exams**
    - Essay Topics
      * Divorce
      * Child custody
      * Establishing/contesting parentage
      * Alimony/spousal maintenance
      * Child support
* **Test Tips**
  + Definition sections at the beginning of the chapters explain how the terms work & helps
  + Need to know what’s in the text, generally need to know §
  + Need to know which definitions go to which subsection
  + IRAC
  + Rules addressing each issue only (prefers rule rather than code section)
  + Argue alternative side if time remaining
* **Raise $300 🡪 She’ll tell us 5 topics not covered + choice of 4/6 short answer topics**
* **Not on Exam !!!**
  + 1. Alternative Dispute Resolution (“ADR”), including mediation, arbitration, and collaborative law;
  + 2. Adoption, Chap. 162;
  + 3. Termination of the Parent-Child Relationship, Chap. 161;
  + 4. Military Duty Subchapter L, Chap. 153.701-153.709; and
  + 5. Protection of the Child, Title 5, Chaps. 261-266.

# Review

* Go into statutes rather than cases
* Discuss Public Policy
  + **State’s goal:** Protect & preserve marriage
* Every Marriage presumed valid
* Most recent marriage presumed valid
  + Spouse has Bop to proven existing marriage never terminated
* Capacity of spouse, even minor
  + More historical. Women didn’t use to have capacity
  + **Modern:** Do have capacity.
    - **Minors:** No capacity. Once married, they do have capacity
* No COA for criminal conversion 🡪 Can’t file suit & receive $ DAS
* No COA for alienation 🡪 Can’t file suit & receive $ DAS
* …
* Marriage: formal & informal (CL)
  + Read commentary in Statutes
  + Formal
    - Application process
    - Limits on issue: age & consanguinity \*pay attention
    - Ceremony & return of license
  + Fraud, Mistake, Illegality
  + Ceremony Conducted by Unauthorized Person
    - See subchapter D Intro comment on the presumption that every marriage presumed valid
    - If problem with license, mistake 🡪 Still valid marriage bc presumption
  + Informal CL Marriage (w/out formalities)
    - Can establish, more difficult to challenge
    - Established by:
      * Execution of declaration **or**
      * 3 Prong Test: Agree to marry **&** Cohabitatate in this state **&** Represented as married
  + Proof
    - Age limit: 18
    - Time limit: 2 years otherwise presume no CL marriage
    - Capacity (for both formal & informal marriage)
* Rights & Duties of Spouses
  + *Mutual* obligation to support
    - If 1 spouse who is typically economically independent spouse 🡪 3P has right to seek support from other spouse
  + Doctine of necessities
* Chapter 6 Dissolution of Marriage Relationship
  + 3 ways: Divorce, Annulment, Declaratory jdgmtn FC 1.003
  + Also: Death
  + Fault Grounds
  + No fault
  + 60 day waiting period once you file (other jsds, 80, 90, counseling)
  + ….
  + ….
  + Note: There’s CL marriage but no CL divorce
* Grounds & Defenses
  + Insupportability (no fault)
    - Best unless some other strategic reasons
    - Cruelty
    - Adultery
    - Conviction of Felony
    - Abandoment
    - Living apart (no fault)
    - Confinement in mental hospital (no fault)
  + Defenses
    - Abolished: Recrimination & adultery
    - …
    - …
  + Grounds for Annulment
    - Usually has something to do w/ capacity & consent:
      * Underage marriage
        + Ct can grant in its discretion (pregnancy)
      * Underage annulment barred by adulthood
      * Under influence of alcohol or narcotics
        + If married in vegas 🡪 Can’t cohabitate to annul
      * Impotency
      * Fraud, duress, force
      * Mental incapacity
      * Concealed divorce
      * Marriage < 72 hrs issue of license,
        + Exception if go through counseling or in military
  + Void Marriage chap6 subchap C
    - Consanguinity
    - Marriage during existence or prior marriage
    - Certain void marriages validated
    - No same sex marriage, no same sex civil unions; contrary to public policy; state const
      * Know language of statutes
    - Marriage to minor <16 w/out Ct order 🡪 Void
    - Marriage to stepchild or stepparent 🡪 Void
      * Affinity
        + Majority Rule: Once affinity relationship ends 🡪 Marriage ends
        + TX Rule: Once affinity ends 🡪 if step child or step parent, no longer….
  + Jsd, Venue Residence, Qualifications
    - All states have residency req’t for divorce: 6 wks to 1 yr
    - TX: Domicile for preceding 6 months: resident in county for preceding 90 days
      * But if from out of state reaching someone in state 🡪 no residency req’t find them where they are
    - Absence for public service/armed forces not previous residents
  + Jsd over nonresident
    - One spouse meets domicile …
    - Long arm …
      * …
      * …
    - complies with …jsd
      * minimum contacts
      * …
    - Remember that divorce is an in rem action
      * Proceedings…
    - Add’l basis for terminating the marriage
      * Annulment
      * Mediation
        + Some jsd compel
      * Collaborative Law
      * Informal Settlement Conferences (casebook has brief summary 137, 139) (commom)
    - 6.308Exercising Partial Jsd
      * A Ct in which a suit for dissolution,,,
      * Cts authority to resolve
      * What limits it?
        + Ct lacks personal jsd over a nonresident arty in a suite for dissolution of marriage
        + Req’d jsd under chapter 152 (UCCJEA) or
        + REq’d jsd under chapter 159 (UIFSA)
      * Mandatory Joinder of SAPCR to divorce suit 6.406
      * Bifurcated divorce
        + If in las vegas & want divorce 🡪 Nevada can give you a divorce but can’t deal with children, home, property
  + General Provisions 101-111
    - General Standing
    - Special Standing (know the diff)
      * Grandparent or other person (3rd degree of consanguinity)
      * Sibling
      * Request for termination & adoption
    - Limitations on standing
      * Deals w/ adoption - do you have a right to acess once the adoption has been finalized
    - Jsd
      * Jsd over nonresident: Long-arm Statute 102.011
      * …
    - Exercising Partial Jsd
      * …bc Ct lacks
        + Ct lacks personal jsd over a nonresident arty in a suite for dissolution of marriage
        + Req’d jsd under chapter 152 (UCCJEA) or
        + REq’d jsd under chapter 159 (UIFSA)
        + Conflicts in provisions: UCCJEA & UIFSA prevail

Also consider PKPA that attempted to do the same thing prior to the UCCJEA

Also can hammer them w/ FF&C clause

* + - General provisions
      * Venue
      * Ad litems
      * …
* SAPCR 151-162
  + Rights & duties of parent
  + UCCJEA chap 152
    - Irreconcilable conflicts, this chap. Prevails
    - Definitions
    - Communication bw Cts req’d…
* UCCJEA
  + Jsd
    - Initial (or original) jsd
    - Once its under uccjea 🡪 that Ct has exclusive continuing jsd
    - …
    - simultaneous…
    - Inconvenient forum
    - Jsd declined….
* Conservatorship, Possession, & Access (BEST INTEREST)
  + Public policy & best interest 152.001-002
  + No discrimination based on sex or marital status
  + Managing conservator
    - Presumptions: presume its in the best interest of the child
  + Possessory Conservator
    - If not jt managing conservator 🡪 should be possessory conservator
  + Proceeding to establish conservatorship status determination (IE: In rem so Ct can proceed to effect that status
  + Standard Possession order
    - Distance/holidays/travel
    - …
    - …
  + Rights of grandparents, aunts, unclues
    - They all fall w/in 3rd degree of consanguinity
    - Limits on right to request possession and access
    - FC 153 Subchapter H
    - Military Duty FC 153 subchapter L
* Custody
  + Continuing and exclusive jsd
    - Once ct aquire it, it retains it unless there were changes chapter 155..
  + Modification 156.001-.105
    - Material and sub change
    - …
    - …
* Child Support FC Chapters 154
  + Parental duty to support
    - In prison 🡪 Not a basis for obligation to support
  + Guidelines - presumption that guidelines are right and in best interest
  + Net resources
  + Net resources of spouse
    - Not included for purposes of calculating child support
  + Deemed income
    - Ct can deem something you own as an asset
  + Wage & salary presumption
  + Intentional unemployment or underemployment
    - Been on bar 3x in a row
* Support
  + Includes medical support
  + Support for minor or adult disabled child
    - If disabled 🡪 Ct has authority to deem duty of support
  + Termination of duty to support 154.006
  + Retroactive support
    - Prof has problem with this
  + Modification of support
    - FC 156.001; 156.401-.409)
  + GROUNDS
    - M& S change in circs
    - Change in possession
  + Multiple households
    - EX: other spouse marries and has other children
* Termination of Parental Rights
  + Two avenues
    - Voluntary and
      * To allow someone to adopt your baby
    - Involuntary
      * Two step prpcess
        + Be aware of them & 19 subsections
    - Grounds
    - Procedure
* EST PC-Relationship
  + Paternity registry
    - If want to est relationship with child, should register or est relationship
    - Thus, PR is a way to est interest in the child
  + Presumed fathers
    - Be aware of CL that predates statutes: one of child born during the marriage
  + Acknowledged fathers
  + Estoppel
    - Held the child out and based on conduct of parties with resect to that child for a period of time
  + Assisted reproduction
    - Sometimes one party will want to disavow the agreement or child disabled
    - Its once you sign the agreement for AR that you establish parentage
  + Adoption
    - Its established even if unhappy with child
* Interstate Custody and Support
  + UCCJEA
* UIFSA
  + PKPA
  + FF&C