

IMPACT OF MATRIMONIAL LAWS UPON INTERNATIONAL ESTATE PLANNING

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THE IMPACT OF MATRIMONIAL LAWS UPON INTERNATIONAL ESTATE PLANNING

I. Introduction

In Agra, India, home of the Taj Mahal, there is a main gate leading to the city. A fable engraved into the gate reported that during the first year of King Julief's reign, local magistrates divorced two thousand couples. When the King heard about these divorces, he was so outraged that he abolished divorce. During the year following this proclamation, the number of marriages dropped by 3000, while the number of convicted adulteries rose by 7000. Officials estimated that embattled couples destroyed three million rupees' worth of furniture. In addition, 300 wives were burned alive for murdering their husbands, and 75 men were executed for murdering their wives. The fable, as depicted in the gate, concludes by reporting that, upon learning of the consequences of his divorce abolition decree, the King hastened to re-establish divorce, recognizing it as a necessity.¹

Life really has become civilized!

Marriage is most often defined as a socially sanctioned union of one man and one woman. In many societies, historically and even today, marriage has been the focus of creating and/or consolidating dynasties and social, political and financial ties between families and nations, with marriages often arranged by parents and the partners sometimes pledged in childhood. In the West, marriage has traditionally been supervised by the churches; however, civil unions are now permitted in most societies.²

In Anglo-American law, marriage differs from other contracts in that it must be terminated by a court, and not simply by the partners agreeing between themselves. All states in the U.S. have established requirements necessary to enter into a marriage, including age. Much more burdensome criteria exist to dissolve of marriage, including residency and jurisdictional requirements to determine not only where the divorce takes place (the res), but to make a determination of the property settlement and distribution of assets, as well as continuing issues of alimony and child support.

International marriages (marriages between two individuals of differing nations), are continually on the rise, due to the increase in world population, global economy, international travel and, of course, the internet. Even a brief 'surf' for information and resources concerning international marriages turns up page after page of companies boasting would-be Russian wives!³

¹ A quote from Niles' Weekly Register 28, 717 (June 11, 1825), as reproduced in Glenda Riley, *Divorce: An American Tradition* (Oxford University Press, 1991).

² Steven Mintz & Susan Kellogg, *Domestic Revolutions: A social history of American family Life*, (Free Press, 1988).

³ [A copy of a directory of some of these websites is attached FYI.]

Listed below are some of the increasingly complex and frequent issues that arise concerning dissolution of marriages between partners of different nationalities which will require greater scrutiny as the number of global marriages continues to escalate. It is here that cross-border issues of divorce and estate planning may overlap.

- Tax implications for both the payor and payee are always a high priority issue for divorcing spouses with respect to equitable distribution, alimony and child support; estate planning on an international level will necessarily be involved for issues pertaining to premarital assets, as well as post marriage and post divorce income and assets. Partners must consider tax residency and should be concerned with and advised about domicile in order to take advantage of particular tax benefits.
- Estate planning opportunities.
- Forum shopping on an international level has become more prevalent, with parties often carrying on two divorce actions in two countries and racing to more favorable judgment.
 - where prenups are enforced (or not)
 - where equitable distribution is (or is not) grounds for divorce
 - custody guidelines
- Same sex marriage.
- Immigration Marriage Fraud: based on government studies, approximately three out of every ten marriages between United States citizens and non-resident aliens are fraudulent.⁴
- International Parental Kidnapping: this ever-increasing problem often gives rise to Hague Convention proceedings in those countries that subscribe to the Hague Convention, and extra-legal action in those countries that do not.
- Jurisdiction issues arise as to which country has authority to (i) dissolve the marriage; and (ii) determine property settlement/alimony/child support. Due to widely differing divorce laws among countries, and factual showings necessary to

⁴ Kristi J. Spiering, Irrefutable exile under the Immigration Marriage Fraud Amendments: A perspective from the Eighth Amendment and International Human Rights Law, 58 U. CIN. L. REV. 1397 (1990).

establish jurisdiction, this is often a highly contested issue. Usually, each party has their own financial reasons for wanting the country of their choice to decide the dissolution of the marital estate. Choice of law provisions in prenuptial agreements are common.

- Discovery phase of litigation becomes more difficult when assets are located in another country, as do appraisal and sale of assets issues. Foreign trusts present another frustrating area of discovery.
- Posting security for alimony/child support obligations by a payor spouse residing in another country has become a great concern.
- Enforceability of divorce judgments in foreign countries can be difficult and expensive.
- Upholding secular aspects of religious law.

It is possible that a divorce agreement which obligates a foreign ex-spouse to pay child support or alimony, may provide that the foreign ex-spouse shall open letters of credit, normally employed only in commercial settings, using the foreign ex-spouse's business as collateral to secure such obligations. It is also common for courts to be called upon to uphold secular aspects of foreign religious marriage agreements, such as Mahrs (Islamic Law), or Ketubahs (Jewish Law), as has been the case in New York. It is often necessary to retain foreign counsel to litigate the same issues in two countries and to risk competing divorce judgments, doubling the costs to the client.

World Population Statistics: World population currently stands at 7.02 billion persons and is growing at 1.1 % per year, or an annual net addition of 77 million people. World population in the mid-21st century is expected to be in the range of 8.4 to 9 billion, with an estimate of 9.4 billion in 2050.

- Not surprisingly, western countries have a higher rate of divorce; generally between 6 and 8 percent of their population. All this tells us is divorced and not remarried.
- Nations of the former Soviet Republic generally rank a higher divorce percentage than western nations, at approximately 10% of their populations. China, a country of approximately 1 billion people has only a .6% divorce rate. At the other end of the spectrum, divorce among the women of the Cook Islands ranks an all-country high of 33%. There are more divorced

women than men, and most people divorce in their 40s and 50s, when more assets have been accumulated to be ultimately divided.⁵

U.S. Vital Statistics: Snapshot: In 2010, there were 2,096,000 marriages and a 3.6% divorce rate in the United States.⁶ [This is the ratio from which we cull the adage “one out of every two marriages ends in divorce.”] Averages 3:2 in California.

- In 2010, total population in the United States was approximately 308,745,348, with the population of adults (18+) being 234,564,071.⁷
- 129.5 million adults (55.2% of the adult population [18+]) were married in 2010.⁸
- In 2010, 23.7 million adults were currently divorced, representing 10.1 % of the adult population.⁹

II. Legal Summaries of Key Jurisdictions

The following summary of marriage, divorce, descent and distribution and trust laws provides an overview of the commonalities and differences between a wide range of countries in these areas of law.

A. ARGENTINA

Marriage

Marriage ceremonies are performed at the civil registry office in the area of residence of either the bride or groom at their request. The couple must pick up the application forms for permission to marry at the district civil registry office 30 days prior to the date the marriage is to take place. Medical examination forms are obtained also obtained at this time from the same office, and specify a doctor the couple is to see. There is a fee for the marriage book.

⁵ Note: some countries' statistics in this database date back to 1970; most however, appear to have been updated as of 1990-1995.

⁶ CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL MARRIAGE AND DIVORCE RATE TRENDS, PROVISIONAL DATA FOR 2010 (TABLE), http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm

⁷ U.S. CENSUS BUREAU, 2010 CENSUS DATA: POPULATION BY SEX AND SELECTED AGE GROUPS: 2000 AND 2010 (TABLE 1), June 2, 2011, http://www.census.gov/population/www/socdemo/age/age_sex_2010.html.

⁸ U.S. CENSUS BUREAU, 2011 STATISTICAL ABSTRACT: MARITAL STATUS OF THE POPULATION BY AGE AND SEX 2010 (TABLE 57), <http://www.census.gov/compendia/statab/2012/tables/12s0057.pdf>. See U.S. CENSUS BUREAU, AGE AND SEX IN THE UNITED STATES 2010, MARITAL STATUS OF POPULATION 15 YEARS AND OVER BY SEX AND AGE: 2010 (TABLE 10) [hereinafter, 2010 U.S. CENSUS BUREAU STATISTICS], http://www.census.gov/population/www/socdemo/age/age_sex_2010.html.

⁹ *Id.*

If either party was previously married, they must show legal termination of that marriage by either death or divorce. Death certificates or divorce decrees issued in the United States must be authenticated by apostille from the office of the Secretary of State in the state where the divorce decree was issued.

The legal age of capacity for marriage is 21 for both males and females. Both males and females are considered minors until 21.¹⁰ To marry, minors must present a birth certificate and parental consent including identification from the parents, or a death certificate if one of the parents is deceased. If one parent is absent, the present parent must submit identification and authorization from the absent parent, authenticated by the nearest Argentine Consulate and subsequently authenticated by the Ministry of Foreign Affairs and Worship, Buenos Aires. Judicial authorization will be needed absent parental consent.

Civil Union

Argentina legalized same-sex marriage in July 2010.¹¹

Divorce

Prenuptial agreements do not exist in Argentina. Upon divorce, all assets acquired during the marriage are divided equally among the former spouses.¹² Ownership of property brought into the marriage by either party reverts to said party with proof of proper documentation. Post-nuptial agreements are also not recognized in Argentina.

Trusts

Trusts are governed by the Civil Code and provides for inter vivos trusts as well as for testamentary trusts, and states that the property of any given trust is separated from the property of the trustee and the trustor, and is only liable for the debts pertaining to the trust. Any person or legal entity may be a trustee, except for financial trusts, where the only persons allowed as trustees are financial entities pursuant to law 21,526 or entities authorized by the National Securities' Commission.¹³

B. AUSTRALIA

Marriage

The Marriage Act of 1961 establishes uniform marriage laws for the entire Commonwealth. Males and females must be 18 years old to marry; however, in exceptional circumstances they may marry at the age of 16 if a parent/guardian

¹⁰ ARGENTINA LAW DIGEST § 13.06 (Martindale-Hubbell South American Law Digests, 2010).

¹¹ *Argentina Social Statistics*, STATESMAN'S YEARBOOK ONLINE (Barry Turner, ed., Palgrave Macmillan, 2009) [hereinafter STATESMAN'S YEARBOOK ONLINE], available at [http:// www.statemansyearbook.com](http://www.statemansyearbook.com).

¹² ARGENTINA LAW DIGEST § 13.05.

¹³ ARGENTINA LAW DIGEST §§ 12.06, 12.09.

consents or a judge or magistrate gives the authorization.¹⁴ A same sex marriage is not recognized by law.¹⁵ At least one month before the ceremony notice must be given to the marriage registrar. The parties must supply birth certificates and swear that there are no impediments to marriage. The ceremony may be celebrated by authorized religious officiants, authorized celebrants or the marriage registrar and must be witnessed by two adults over the age of 18.

Death of spouse

If the decedent dies intestate and leaves a surviving spouse as well as issue and the estate is worth less than a certain amount (varies by state), the surviving spouse is entitled to the entire estate. Estates exceeding the threshold amount are distributed among the spouse and the issue with the spouse's entitlement being a sum of money plus a fraction of the estate and the remainder going to the issue. The size of the share of the surviving spouse without issue varies by state.¹⁶ In Tasmania, New South Wales, Victoria and South Australia, the surviving spouse inherits the entire estate. In Western Australia and Queensland the surviving spouse only inherits the entire estate if there are no near kin; otherwise, he or she inherits a sum of money plus one-half of the remainder of the estate.

Dower and curtesy have been abolished, but under statute in each state, the surviving spouse and children may apply to the courts to obtain an increased share of the estate, where the will or the intestacy provisions do not provide adequately for them.

Divorce

The Convention on Recovery Abroad of Maintenance (New York, 1956) and the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (The Hague, 1973) are implemented by the Family Law Act of 1975, which regulates divorce throughout the commonwealth. Alimony and support payments are only required if spouse is unable to maintain himself or herself and only to the extent that the supporting spouse is able. Age, health, custody of children, assets, contribution to marriage and duration of marriage are important factors in determining the ability of the spouse to maintain himself or herself.

Matrimonial property is distinguished from separate property. The court may alter the parties' interests in matrimonial property and can make any just and equitable order concerning property governed by ante- or postnuptial settlement.

Parents may enter into a court-registered "child-agreement" relating to custody, guardianship, welfare and access to child. The court may vary provisions of the

¹⁴ AUSTRALIA LAW DIGEST § 11.02 (Martindale-Hubbell Asian Law Digests, 2010) (Under Marriage Act 1962, the marriageable age for both males and females is 18 years old (or 16 years old if there are exceptional circumstances and judge or magistrate and parents give consent).

¹⁵ *Id.* (furthermore, under the Marriage Act 1961, unions solemnized overseas between same-sex couples are not recognized as marriages in Australia).

¹⁶ AUSTRALIA LAW DIGEST §§ 31.03-.08.

agreement if so required for the well-being of the child. The child may also institute proceedings to vary the terms of the agreement. Foreign custody orders from certain countries may be registered in Australian courts. The Family Law Amendment (Shared Parental Responsibility) Act 2006 provides for the presumption of equal shared parental responsibility so that both parents have an equal role in the long-term decisions affecting the child's life.¹⁷

The Family Court has jurisdiction if at the time the application for divorce is filed, either party is an Australian citizen or domiciled in Australia or has been an ordinary resident in Australia for at least one year before the start of the proceeding.

In Western Australia, the Family Court Amendment Act (2002) gave de facto couples similar rights and remedies as married couples. The Act also provided de facto couples with legal rights in relation to property and maintenance.¹⁸

Trusts

Australia follows English law with respect to trusts.

C. AUSTRIA

Marriage

Marriage ceremonies must be performed before civil officers to have legal significance, although ceremonies before religious officiants are permitted (though no legal significance is attached to such ceremonies). The legal age of capacity for marriage is 18 years for both sexes, however, a court may permit marriage between an 18 year-old and a 16 year-old. Minors may marry with parental consent. Same-sex marriages and civil unions are not recognized in Austria, but domestic partnership is. In January 2010, Austria created the possibility for same-sex couples to enter into registered partnerships.¹⁹ Domestic partnerships give cohabiting same-sex couples to the same rights as their unmarried cohabiting opposite-sex counterparts.

The default property regime between spouses is that property owned or acquired by either spouse before or after marriage remains separate personal property. Property used by the spouses during their marriage becomes marital property. The spouse who cares for the household has a claim for support against the other spouse during marriage. Agreements providing for a complete or partial community of property may be entered into before or after marriage. Such

¹⁷AUSTRALIA LAW DIGEST § 11.02; see Family Law Amendment (Shared Prenatal Responsibility) Act 2006.

¹⁸ AUSTRALIA LAW DIGEST § 32.02.

¹⁹ Antoine Buyse, *Strasbourg court rules that states are not obliged to allow gay marriage*, GUARDIAN LEGAL NETWORK, <http://www.guardian.co.uk/law/2010/jun/24/european-court-of-human-rights-civil-partnerships>.

agreements must be in writing and notarized.²⁰

Death of spouse

If a spouse dies intestate, the surviving spouse is entitled to one-third of the decedent's estate if the decedent leaves issue.²¹ If the decedent does not leave issue but leaves parents, grandparents or parents' issue, the surviving spouse is entitled to two-thirds of the estate.

If the decedent dies testate without provision for the surviving spouse, the surviving spouse is entitled to one-half of the amount that the spouse would be entitled to had the decedent died intestate. If the surviving spouse lacks sufficient income, he or she may be entitled to support from the estate or heirs. The statutory share may be precluded by will in certain cases (e.g., acts of disloyalty by the surviving spouse or life imprisonment of the surviving spouse).

Divorce

The spouse at fault is usually required to pay alimony. In the event that child support is awarded, if one spouse fails to pay the required child support, the government will advance funds for such support upon application and decree by the Guardianship Court.

Property used by the spouses during marriage and accrued during marriage is usually divided equally between the spouses upon divorce. If equal division in kind is impossible, equalizing payments between spouses can be ordered by the court. Certain types of property remain separate: property belonging to one spouse before marriage or acquired by inheritance or gift during marriage; the personal property of one spouse; and the property for use in one spouse's profession.²²

Suit for divorce may be brought before Austrian courts if at least one spouse is an Austrian citizen or if at least one spouse has permanent residence in Austria and the courts in the non-resident spouse's home country will recognize the Austrian divorce.

Austria is a member of the European Conventions on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children.

Trusts

Trusts are not authorized under Austrian law. However, as of 2004, the Private Law Foundation, a legal entity with a corporate structure, was created for the

²⁰AUSTRIA LAW DIGEST § 13.04 (Martindale-Hubbell European Law Digests, 2010).

²¹ AUSTRIA LAW DIGEST § 12.02.

²² AUSTRIA LAW DIGEST §13.03.

purpose of administering certain funds according to directions of founder.²³

D. BRAZIL

Marriage

A license to marry within three months may be obtained from civil registry official upon proof of age and residence of the parties. The female partner must be at least 16 years old and the male partner must be at least 18 years old. Notice of the intended marriage must be posted for 15 days, but publication may be dispensed with under some circumstances. The marriage ceremony may be civil or religious, provided that the legal requirements are fulfilled. At least two witnesses, 21 years of age or older, must be present at the ceremony, who must declare that they know the parties and that no impediment to marriage exists.

Since 2004, same-sex Civil Unions have been allowed in Brazil.²⁴ In May 2011, the Supreme Court of Brazil declared that civil unions between same-sex couples must be allowed in the nation, and that gay couples deserve the same legal rights as heterosexual couples when it comes to alimony, retirement benefits of a partner who dies, inheritances, and other issues. The ruling, however, stopped short of legalizing same-sex marriage.²⁵

Antenuptial agreements are recognized, provided that they are notarized and registered. In the absence of an antenuptial agreement, property during marriage is held in partial community ownership. Property owned by the spouses before marriage or inherited individually after marriage (and under some other circumstances) is separate property.²⁶ Property acquired after marriage is usually community property regardless of under whose name the property is registered.²⁷

Both spouses have administration of community property, and said property responds to the debts incurred by either spouse. Arrangements other than the default community property regime may be made by prenuptial agreement.²⁸

Death of spouse

The surviving spouse of a decedent who dies intestate is not entitled to an outright share of the estate unless there are no surviving issue or ancestors. If decedent has left issue, the surviving spouse has a usufruct of one-fourth of the estate. The

²³ AUSTRIA LAW DIGEST §12.04.

²⁴ Larry Rohter, *World Briefing Americas: Brazil: State to Allow Same-Sex Unions*, NEW YORK TIMES, March 6, 2004, <http://www.nytimes.com/2004/03/06/world/world-briefing-americas-brazil-state-to-allow-same-sex-unions.html?scp=2&sq=brazil%20civil%20unions&st=cse>.

²⁵ *Id.*

²⁶ BRAZIL LAW DIGEST § 12.03 (Martindale-Hubbell South American Law Digests, 2010).

²⁷ BRAZIL LAW DIGEST § 13.05.

²⁸ *Id.*

surviving spouse has a usufruct of one-half of the estate if the decedent has left only ascendants. If there are no issue and no ascendants the surviving spouse takes the entire estate.²⁹

The decedent may dispose of only one-half of his estate by will if he leaves issue or ascendants. There is no elective share for the surviving spouse.

Divorce

In the event of a judicial separation, the parties are responsible for child support in proportion to their respective assets. Spousal support is required under some circumstances. In the absence of an agreement to the contrary, community property is divided equally between spouses and each spouse retains separate property. Upon divorce by mutual consent, custody of any children is awarded in accordance with the parties' agreement. If the parties do not agree on custody of the children, the court shall grant custody to the parent in the best interest of the child.³⁰

Trusts

The Civil Code provides that real property or money may be transferred by deed or will to provide for income to a beneficiary for a specified period.

The only type of trust provided for in Brazilian law is a testamentary trust giving a life estate to one person and the remainder to another.³¹

E. CANADA

1. FEDERAL

Marriage, divorce and child support are partially regulated under Federal law; however, the laws of the individual provinces govern most aspects of matrimonial laws. On July 20, 2005, Canada became the fourth country in the world to legalize same-sex marriage nationwide with the approval of the Civil Marriage Act.³²

Canada follows the English common law with respect to trusts.

2. ALBERTA

Marriage

²⁹ BRAZIL LAW DIGEST § 12.03.

³⁰ BRAZIL LAW DIGEST § 13.04.

³¹ BRAZIL LAW DIGEST § 12.06.

³² CANADA LAW DIGEST § 14.01 (Martindale-Hubbell North American Law Digests, 2010); see Civil Marriage Act, S.C.R. 2005, c. 33 (July 20, 2005) (Can.).

The minimum age at which males and females may intermarry is 16, however, minors under the age of 18 must have written consent of parent/guardian or consent of the court. Females may marry at an age less than 16 only if a doctor certifies that the female is pregnant or the mother of a living child. A marriage license, which is valid for 3 months, must be issued before a legally recognized ceremony can occur. The license is granted upon the parties' appearance before the registrar and their answering questions under oath. At least two witnesses are required at the ceremony. The officiant, usually a minister or marriage commissioner must be authorized by the Director of the province in order to perform the ceremony.

Antenuptial agreements regarding matrimonial property are valid but only enforceable after marriage. The parties must acknowledge in writing that they are aware of the nature of the agreement, aware of possible future claims to property under the Matrimonial Property Act and are waiving them and are executing the agreement voluntarily.

Death of spouse

If the decedent dies intestate and leaves no issue, the surviving spouse inherits the entire estate. If the decedent leaves issue, the surviving spouse inherits the first \$40,000 and an additional share, based on the number of issue left. If one descendant survives, the surviving spouse is entitled to one-half of the remaining estate. If more than one descendant survives, the surviving spouse is entitled to one-third of the remaining estate. The rights of the surviving spouse are forfeited by living apart from the decedent and committing adultery.³³ The dependents of the decedent may apply to the court to vary the intestate distribution if their shares are insufficient for their needs. If the decedent leaves a will that does not provide adequately for his or her dependents (the spouse or dependent children), they may apply for relief to the court, which may grant relief that it finds equitable. The court may take into consideration the conduct, character and assets of the dependents.

In May 2002, the Intestate Succession Act was amended to include "adult interdependent partners," being person living in conjugal relationship with deceased for three years or period of permanence if there is a child. The Act gave the above named person the same status as spouse under the Intestate Succession Act.

Divorce

The court may grant temporary or permanent support to either spouse, based on condition, means and needs, without regard to conduct. The court may order distribution of property acquired after marriage upon consideration of earning capacity, duration of the marriage, any agreement between parties and contributions of each spouse to the marital property.

³³ ALBERTA LAW DIGEST, *supra* note 32, § 13.06; Intestate Succession Act, c. I-10, §§ 3[2][a], 3.1[1] (Can.).

Application for property distribution by the court must be made within two years of either divorce or separation.

3. **BRITISH COLUMBIA**

Marriage

A marriage license must be issued before a legally recognized ceremony may take place. The license is valid for 3 months.³⁴ The ceremony may be performed by the marriage commissioner or by a religious representative registered under Marriage Act. The minimum age to marry without consent of a parent or guardian is 19 years. The rules of capacity and formalities follow the laws of England as existed in 1858, except where superseded by the Federal Marriage Act and the laws of British Columbia³⁵. Common law marriages are recognized in British Columbia. The Family Relations Act, c. 128 defines spouse to include two people who, not being married, live together in marriage-like relationship for at least two years, including persons of same gender. Common law spouses are not subject to the community property system.³⁶

Antenuptial agreements opting out of the community property system are valid, but the court can modify an agreement on the basis of fairness, in the event of a divorce.

Death of spouse

In the event of an intestacy, if estate is worth \$65,000 or less, the surviving spouse is entitled to the entire estate. If the estate is worth more than \$65,000, the surviving spouse takes \$65,000, a life estate in the family home, all of the household furnishings and an additional share of the estate, based on the number of issue left by the decedent.³⁷ If the decedent has left no issue, the surviving spouse is entitled to the entire estate. If the decedent has left one descendant, the surviving spouse is entitled to one-half of the estate. If the decedent has left more than one child, the surviving spouse is entitled to one-third of the estate. In the case of common law spouses, the court may order so much of the intestate's estate as it sees fit for support, maintenance and benefit of the common law spouse.

There is no right of election against a decedent's will; however, under the Wills Variation Act, the court may, upon application, order such provision as it deems equitable when the will does not make adequate provision for testator's spouse or dependent children.³⁸

³⁴ Marriage Act §§15-16 (Can.); BRITISH COLUMBIA LAW DIGEST, *supra* note 32, § 14.08.

³⁵ BRITISH COLUMBIA LAW DIGEST § 14.08; B.C.L.R. 282 §6 (Can.).

³⁶ BRITISH COLUMBIA LAW DIGEST § 14.08.

³⁷ BRITISH COLUMBIA LAW DIGEST § 14.08; Estate Administration Act, B.C.L.R. 122, pt. 10 §§ 83, 85 (Can.).

³⁸ BRITISH COLUMBIA LAW DIGEST § 13.15; Wills Act, B.C.L.R. 489, 490 (Can.).

Divorce

In cases of divorce, each party is entitled to a one-half interest as tenant-in-common in all Family Assets.³⁹ The court may alter this division if unfairness results. Spouses can opt out of the community property system with a settlement agreement, but the court can modify such an agreement if it is inequitable. Family Assets are any assets used for family purposes. They can include one spouse's business where the other spouse makes indirect contributions to it (e.g. through household work or child-rearing).

4. **MANITOBA**

Marriage

Issuance of a marriage license or publication of banns is required before a marriage ceremony can take place. The marriage may be performed by any authorized officiant over 18 years of age. The minimum age to marry is 18 years for males and females. Parental consent is necessary for parties between 16 and 18 years of age to marry and court consent is necessary for parties under 16 years to marry unless previously widowed or divorced.⁴⁰ Common law marriages are not recognized, although, under certain statutes, individuals living in common law relationships are given rights the same as or similar to those who are legally married.

Antenuptial agreements are recognized. Such agreements cannot prevent equal division of pension benefits on dissolution of marriage or oust the court's jurisdiction over child custody and access or prevent applications for support.

Death of spouse

In the case of an intestacy, the surviving spouse's share of the estate is determined under the Intestate Succession Act.⁴¹ If there are no issue of the decedent or only common issue of the decedent and the surviving spouse, the surviving spouse is entitled to the entire estate. If the decedent has left issue who are not common, the surviving spouse is entitled to the greater of \$50,000 or 50% of estate and one-half of the balance of the estate. The surviving spouse may make application for an accounting and equalization of assets. Such equalization payment is reduced by the amount of the entitlement of the surviving spouse under the Intestate Succession Act.

There is no elective share; however, under the Dependents' Relief Act, where the decedent has not made adequate provision for maintenance and support of dependents, the court may order that maintenance be paid out of the decedent's estate. Dependents are defined as the spouse, infant

³⁹ See Rules of Court §11(1)(b), r. 60 (Can.).

⁴⁰ MANITOBA LAW DIGEST, *supra* note 32, § 14.09.

⁴¹ *Id.*; Intestate Succession Act, C.C.S.M. c. 185 (Can.).

children and others dependent upon the decedent for support. Application must be brought within six months of probate.

Divorce

Parties may apply for an accounting and division of family and commercial assets acquired during marriage. The court may order transfer of assets, payment of monies or sale of assets to give effect to the accounting and division.

There is a presumption of equal sharing of property, except where grossly unfair.⁴²

5. NEW BRUNSWICK

Marriage

A marriage license, valid for six months, is required. The marriage ceremony may be performed by anyone resident in New Brunswick and registered as being able to perform marriages.

The minimum age has not been modified from the English common law rule of 12 years for females and 14 years for males; however, the consent of a guardian is required for parties under 18.⁴³ With respect to common law marriages, English common law rules apply. There is a rebuttable presumption of marriage where a man and a woman have cohabited for a length of time and have acquired the reputation of being married.

During marriage, spouses have equal rights to the marital home.⁴⁴ Antenuptial agreements may address division of marital property and support obligations, but not custody or access to children. Marital property includes property acquired before marriage or acquired by each spouse independently after marriage, including separate earnings.

Death of spouse

In the case of an intestacy, the surviving spouse's share is determined under the Devolution of Estates Act.⁴⁵ If there are no issue, the surviving spouse is entitled to the entire estate. If the decedent has left one child or if there are issue of one child, the surviving spouse is entitled to personal chattels and one-half of the estate. If the decedent has more than one child or issue of more than one child, the surviving spouse is entitled to personal chattels and one-third of the estate. Under the Testators' Family Maintenance Act, the surviving spouse may apply to the court for additional support from the decedent's estate if the intestate share is not

⁴² MANITOBA LAW DIGEST § 14.05; Marital Property Act, C.C.S.M. c. M45 (Can.).

⁴³ NEW BRUNSWICK LAW DIGEST, *supra* note 32, § 14.09.

⁴⁴ NEW BRUNSWICK LAW DIGEST § 14.07.

⁴⁵ NEW BRUNSWICK LAW DIGEST § 13.07; *see* Devolution of Estate Act, c. D-9 (Can.).

adequate.

There is no elective share for a surviving spouse; however, under the Testators Family Maintenance Act, the surviving spouse may apply to the court for additional support from the decedent's estate if the bequest to the spouse is not adequate.

Divorce

Marital property is divided equally upon divorce, but the court may vary such division if inequitable, considering any agreement, periods of cohabitation and separation, and circumstances relating to the procurement and maintenance of property.

6. NEWFOUNDLAND

Marriage

The formalities of marriage are governed by the Solemnization of Marriage Act.⁴⁶ A marriage license must be obtained and delivered to a solemnizer at least four days before solemnization. Marriage licenses are valid for 30 or 60 days. Two witnesses over the age of 16 are required. Parental consent is required for parties between the ages of 16 and 19 to marry, however, consent may be judicially dispensed with. A person 18 or 19 years old who has been living apart from and without support of a parent/guardian for at least three months prior to an application for a marriage license may marry without parental consent. Persons under 16 must obtain authority for a license by a Supreme Court judicial order. Common law marriages are not per se recognized, however, those living in common law relationships enjoy certain rights prescribed by provincial and federal statutes and those living in common law may, by cohabitation agreement, adopt some or all provisions of the Family Law Act.

Antenuptial agreements may provide for division of property, support obligations, the right to direct the education of children and possession of matrimonial home, but not custody of or access to children. The court may always disregard provisions regarding children if the children's best interests are not fulfilled. Each spouse holds a one-half interest as joint tenants in the matrimonial home. One spouse may not mortgage or dispose of the matrimonial home without the consent of other the spouse in the absence of a court order.

Death of spouse

The surviving spouse's share in the event of an intestacy if there are no issue is the entire estate. If the decedent has left one child or issue of one child, the surviving spouse is entitled to one-half of the estate. If the decedent has left more than one child or issue of more than one child, the

⁴⁶ NEWFOUNDLAND AND LABRADOR LAW DIGEST, *supra* note 32, § 14.07; *see* Marriage Act, S-19 (Can.).

surviving spouse inherits one-third of the estate.

Divorce

Divorce is governed by the federal Divorce Act.

7. **NOVA SCOTIA**

Marriage

A license is required before the ceremony may be performed. The ceremony may be performed by a minister or by a commissioner or a staff officer of the Salvation Army, provided he or she is registered in accordance with the Solemnization of Marriage Act. Two witnesses at least 16 years of age are required. Marriage is prohibited for parties under the age of 16 unless the court finds the marriage to be in the parties' best interests.⁴⁷ Consent of guardians is required for parties under the age of 19 unless the court dispenses with the consent requirement or the individual is a widow, widower, or divorcee.

Spouses are equally entitled to the matrimonial home. Antenuptial contracts and post-nuptial contracts are valid if they are signed and witnessed by both parties. The court may disregard terms that are not in the best interests of the spouses' child and may vary unconscionable, unduly harsh or fraudulent terms. There is no community property regime.

Death of spouse

The surviving spouse's share in the case of intestacy is the lesser of \$50,000 or the entire estate plus a share determined by the number of children surviving. If there are no children, the surviving spouse is entitled to the entire estate. If there is one child, the surviving spouse is entitled to one-half of the remainder. If there are two or more children, the surviving spouse is entitled to one-third of the remainder.

Upon registration of a Domestic-Partnership Agreement under the Vital Statistics Act, domestic partners have the same rights and obligations pursuant to the Intestate Succession Act.

Divorce

Divorce is governed by the federal Divorce Act. An equal division of property between the parties is deemed fair unless proven otherwise. Upon the Registration of Domestic-Partnership Agreement pursuant to the Vital Statistics Act, domestic partners have, as between themselves and with respect to other persons, the same rights and obligations pursuant to

⁴⁷ NOVA SCOTIA LAW DIGEST, *supra* note 32, § 14.10; N.S.R. 2d c. 436 § 21 (Can.).

the Matrimonial Property Act.⁴⁸

8. **ONTARIO**

Marriage

The parties must either obtain a license (valid for 3 months after issuance), publish banns or obtain a special permit from the office of the Minister of Consumer and Commercial Relations or from the clerk of the city, town or village before the marriage may be solemnized. The ceremony may be performed by a minister or clergyman of any denomination if a resident of Ontario and authorized by the Minister of Consumer and Commercial Relations to perform marriages. The consent of parents is required if either party is between 16 and 18 years of age. The Civil Marriage Act, S.C. 2005, c. 33, extends marriage to include same-sex unions.

Property is shared between the spouses under a community of property system. Excluded from the community is property acquired by gift or inheritance, damages for personal injuries, proceeds of life insurance policies and property excluded by marriage contract. Marriage contracts (ante- or post-nuptial) dealing with rights and obligations upon marriage and dissolution are recognized. Contracts may address ownership of property, support obligations, education of children and any other matter concerning children except custody or access. Contracts may be set aside as unconscionable if assets are hidden.

Common law marriages are not formally recognized but where a man and woman have cohabited continuously for at least three years or have cohabited in a relationship of some permanence and are natural or adoptive parents of a child, they are considered spouses for purposes of support obligations. If common law marriages are constituted in jurisdictions that recognize them, they are formally valid in Ontario. Cohabitation agreements that address rights and obligations during cohabitation and at the end of cohabitation addressing same issues as marriage contracts are valid.⁴⁹

Marriage revokes a will unless the will declares it to be made in contemplation of such marriage or unless spouse of the testator elects to take under such will in a writing filed with Estate Registrar.

Death of spouse

In the case of an intestacy with no surviving children, the surviving spouse's share is the entire estate. If there is one child, the first \$200,000 of the estate and one-half of the remainder are allocated to the surviving spouse. If two or more children survive, the first \$200,000 of the estate

⁴⁸ NOVA SCOTIA LAW DIGEST § 13.05; N.S.R. 2d c. 494, as am'd by 1998, c. 8; 2000, c. 29; 2001, cc. 4, 5, 31, 45; 2003 [2d sess.], c. 4; 2004, cc. 10, 48; 2005, c. 9; 2005, c. 42; 2006, c. 15 (Can.).

⁴⁹ N.S.R. 2d c. F. 3, § 29 (Can.).

and one-third of the remainder are allocated to the surviving spouse. The surviving spouse can elect the Family Law Act entitlement instead of the intestate share.

Dower and curtesy have been abolished; however a surviving spouse can claim an entitlement under the Family Law Act.

Divorce

A testator's will is not revoked by divorce of the testator. The will is construed as if the former spouse predeceased the testator, subject to contrary intent shown in the will.

9. **PRINCE EDWARD ISLAND**

Laws concerning marriage and divorce are largely the same as Ontario's.

10. **QUEBEC**

Marriage

Where either party is under the age of 18, consent of parent/tutor is necessary.⁵⁰ Persons 16 or younger may not marry. Publication of banns is required unless dispensation is obtained or if intended spouses are already in civil union. Publication is achieved by posting notice 20 days prior to marriage. Marriage may be solemnized by any clerk or deputy clerk designated by the Minister of Justice for such purpose or other persons so designated such as mayor, notary, municipal officers, ministers of religion, etc. Common law marriages are not recognized, however, some special legislation may confer social benefits on common law spouses. Quebec allows for civil unions between same-sex couples.

Marital property is held in a regime of partnership of acquests, which consists of all property acquired during marriage not declared by law to be private property. Private property is property owned before marriage, property acquired by inheritance or gift and income therefrom, property replacing private property, clothing and personal effects and instruments required by each spouse's profession. Each spouse administers his or her private property and acquests but cannot dispose of acquests (other than incidental acquests) without the consent of the other spouse. Certain assets belong to the family patrimony regardless of who has title: the primary and secondary residences of family; vehicles used for family purposes; and benefits accrued during marriage in retirement plans. Spouses cannot renounce their rights in the family patrimony during marriage, but a surviving spouse may renounce his or her rights by notarized deed upon the death of the other spouse or decree of divorce or separation.

⁵⁰ Civil Code of Quebec, 373 (Can.).

Antenuptial contracts modifying partnership of acquests are permitted.⁵¹ Postnuptial contracts must be notarized and approved by court to be effective.

Death of spouse

In the absence of issue and privileged relations (*i.e.*, parents, siblings, nephews and nieces), the surviving spouse's intestate share is the entire estate. If there are issue, the surviving spouse is entitled to one-third of the estate. If there are privileged relations of the decedent, the surviving spouse is entitled to two-thirds of the estate. The surviving spouse may apply to the court for an allowance as compensation for contribution in goods and services to the estate, payable as agreed between the parties or as determined by the court. Former spouses receiving support at the time of death may apply to the court for up to 12 months of support from the estate.

There is no right of election against a will, except for support for dependents.

Divorce

Divorce is largely governed by federal law. Divorce does not revoke a will, but revokes a legacy to a former spouse unless the testator stipulates otherwise in the will.

11. SASKATCHEWAN

Marriage

Persons under the age of 18 must have parental consent or a judge's order to marry unless marriage was consummated or parties have cohabitated after ceremony. License is required and may be obtained by statutory declaration, license is valid for three months. Solemnization of marriage may be performed by clergy and marriage commissioners registered under The Marriage Act, 1995.⁵² Two adult witnesses must be present at the ceremony. For most statutory purposes, common law spousal relationships, both same-sex and opposite-sex, are equivalent to spousal relationships by marriage.

A will is revoked by the subsequent marriage of the testator. Antenuptial contracts are binding if in writing, signed and witnessed. Each party must sign an acknowledgment as to the nature and effect of the agreement before his or her own lawyer and the lawyer must sign a certificate as to the execution by the party. There is no community property system, but there is a matrimonial property concept. Common law marriages are not recognized.

⁵¹ Civil Code of Quebec, 432, 521.8 (Can.).

⁵² SASKATCHEWAN LAW DIGEST, *supra* note 32, § 14.09; Marriage Act of 1995, Sask. L.R. c. M-4.1, § 3 (Can.).

Death of spouse

The surviving spouse's share in the event of an intestacy is first \$100,000 plus a share determined by the number of issue surviving. If no issue survive, the surviving spouse's share is the entire estate. If one child or one child's issue survive, the surviving spouse's share is one-half of the residue. If more than one child or the issue of more than one child survive, the surviving spouse's share is one-third of the residue.

Divorce

Divorce does not revoke a will but it does revoke bequests and powers given to the former spouse.

F. CHINA

Marriage

Before parties can be married, the proposed marriage must be registered. A license is then issued, which creates the marital status.⁵³ The minimum age for males to marry is 22 years and the minimum age for females to marry is 20 years. Marriage is prohibited if one party is suffering from a disease regarded by medical science as rendering the person unfit for marriage. There is no law recognizing same sex partners.

All property acquired after marriage is joint property unless there is an agreement to the contrary.⁵⁴ Spouses have equal rights to possession and management of joint property. Spouses share a duty to support each other and to support their children. Children in turn have a duty to support and assist their parents. Parents who have lost their ability to work or have difficulty supporting themselves have the right to demand that children pay for their support.

Death of spouse

If a decedent dies intestate and is survived by relatives of the first order (spouse, children, parents) those relatives inherit equally to exclusion of persons in the second order (siblings and grandparents). If no relatives of the first order survive, persons in the second order inherit equally.⁵⁵

Chinese social practice governs many aspects of inheritance. For example, if parents live with one son, their home goes to that son upon their death. Daughters who marry out of the family household appear to be expected to waive their rights to inherit from their parents.

⁵³ PEOPLE'S REPUBLIC OF CHINA LAW DIGEST § 14.06 (Martindale-Hubbell Asian Law Digests, 2010); Marriage Law, Art. 17 (China).

⁵⁴ PEOPLE'S REPUBLIC OF CHINA LAW DIGEST § 14.09.

⁵⁵ PEOPLE'S REPUBLIC OF CHINA LAW DIGEST § 13.02.

Divorce

If one party cannot maintain himself or herself, the other party may be ordered to pay support if the parties do not agree.⁵⁶ A child may petition the court for the parent to increase the amount of child support for education and maintenance.

If the parties do not agree as to the distribution of marital property, the court may decide the disposition of joint property, considering the state of family property, and the rights and interests of each party and the children.

The mother usually has custody of breast-fed children until weaning. After weaning, the court looks at the rights and interests of the child and the circumstances of both parties.

Trusts

Trusts are recognized for business purposes but may not be used for estate planning purposes. The Trust Law of China, adopted in October 2001, created options for asset and wealth management. Trusts created under this law must be created with a legal purpose.⁵⁷

G. COSTA RICA

Marriage

Publication of a proposed marriage (or dispensation) is required before a ceremony may occur. The ceremony may be either Roman Catholic or civil (performed by official of civil registry or before notary public and two witnesses). The parties must be at least 15 years of age. Parties under 18 years must have parental consent to marry. Women may not remarry less than 300 days after the dissolution of a previous marriage unless a child is born in the meantime. Marriages between persons of same sex are void.⁵⁸

The husband has the primary responsibility of supporting the family, but the wife must contribute her own assets as well.⁵⁹ The spouses may make an antenuptial agreement, which may be modified after marriage. The agreement must be duly recorded. If no there is no agreement to the contrary, each spouse may freely dispose of property brought to the marriage by such spouse or acquired during marriage and of the income from such property. Property in possession of the spouses at dissolution of the marriage is considered community property unless proven to have been brought to the marriage by one spouse or obtained by one

⁵⁶ PEOPLE'S REPUBLIC OF CHINA LAW DIGEST § 14.03.

⁵⁷ PEOPLE'S REPUBLIC OF CHINA LAW DIGEST § 13.05.

⁵⁸ COSTA RICA LAW DIGEST § 13.07 (Martindale-Hubbell North American Law Digests, 2010); Code of Family 10-47; Civil Code 27, 29.

⁵⁹ Code of Family 133-47, 229-233 (Costa Rica); Civil Code 595 (Costa Rica).

spouse for valuable consideration.⁶⁰

Death of spouse

Children, parents and the surviving spouse constitute the first order of heirs in the event of an intestacy. A legally separated spouse has no right to inherit. A de facto separated spouse loses all right to property acquired by the other spouse after separation. A spouse who receives community property inherits only the portion required to complete the share of the spouse calculated without community property.

There is no right of election, but the testator must set aside enough property to support his or her children until maturity or, if incapacitated, for their lives. The testator must also set aside enough to support parents and surviving spouse, but if they have enough property, he or she need leave nothing.

Divorce

The court may grant alimony to an innocent spouse sufficient to preserve the financial position that such spouse enjoyed during marriage.⁶¹ A guilty spouse loses all rights to community property derived from assets of the other spouse. Custody of children is given to the innocent spouse unless the court orders otherwise. Children below five years of age are generally left with the mother.

The law does not specify a particular period of residence to institute an action for divorce in Costa Rica, but the initial pleading must show domicile within Costa Rica.

Trusts

Trusts are recognized subject to some limitations.⁶² A trust in favor of a juridical person may not last for more than 30 years unless the beneficiary is the state or a charity. A trustee may not also be a beneficiary.

H. ENGLAND

Marriage

A marriage must take place by special license, common license, publication of banns or a Certificate of the Superintendent Registrar either with or without a license. Medical examinations and blood tests are not required. Parties must be at least 16 years old. Consent of the parents or guardians is required for parties under 18 years.⁶³ The Civil Partnership Act of 2004 enables same-sex couples to

⁶⁰ *Id.*

⁶¹ COSTA RICA LAW DIGEST § 13.04.

⁶² COSTA RICA LAW DIGEST § 12.07.

⁶³ ENGLAND LAW DIGEST § 13.09 (Martindale-Hubbell European Law Digests, 2010).

obtain legal recognition of their relationships by registering for civil partnerships.⁶⁴

There is no community property between spouses.⁶⁵ The regime of separation of property applies: the same principles are used in dividing property between husband and wife as used for strangers who transact at arms' length.

Death of spouse

If the decedent leaves issue, the surviving spouse inherits all personal property, £125,000 free of tax and a life interest in one-half of the residue. If there are no issue, but a parent or sibling of whole blood or their issue survives, the surviving spouse inherits all personal property, £200,000 free of tax and one-half of the residue absolutely. If there are no surviving issue, parent or sibling of whole blood or their issue, the surviving spouse inherits the entire estate absolutely. If the matrimonial home is part of the estate, the surviving spouse can usually require that the home go toward the spouse's share of intestate property.⁶⁶

The court may order support out of the decedent's estate for certain parties, including the surviving spouse, a former spouse who has not remarried, children, dependents and persons living with the decedent as a spouse for two years before death, upon application by the party. When determining support for the spouse, then court takes into account the spouse's age, the duration of the marriage, contribution to the welfare of the family, the provision the spouse might reasonably expect on divorce, the spouse's financial resources, the size of the estate and any disabilities of the spouse.

Divorce

The court has broad power to reallocate property between spouses.⁶⁷ All property of either spouse, whenever and however acquired, is subject to jurisdiction. Pensions may be earmarked for future division or split into two funds at the time of an order. Private agreements between spouses regarding the division of assets upon divorce are encouraged.

Spouses may file a petition for divorce in the courts of England and Wales if one of the parties to the marriage is domiciled in England or Wales on the date when proceedings are commenced, or if either spouse has been habitually resident in England or Wales for one year ending with date on which proceedings are commenced. Decrees granted in other countries are recognized if either spouse was habitually resident in the jurisdiction of the foreign court when the decree was granted; either spouse was a national of the country granting the decree; either spouse was domiciled in the country granting the decree within that country's meaning of domicile where the country in question accepts the doctrine

⁶⁴ ENGLAND LAW DIGEST § 13.12.

⁶⁵ ENGLAND LAW DIGEST § 13.06; *see* Married Women's Property Act 1965 § 1 (Eng.); *see also*, House of Lords in *Stack v. Dowden* (2007) U.K.H.L. 17 (general principles of property law) (Eng.).

⁶⁶ ENGLAND LAW DIGEST § 12.05.

⁶⁷ Divorce in England and Wales is governed by the Matrimonial Causes Act of 1973 (Eng.).

of domicile; or the decree is recognized in the country of both parties' domicile.

Trusts

Trusts are recognized under English law.⁶⁸

I. FRANCE

Marriage

Males must be at least 18 years old and females at least 15 years old in order to marry.⁶⁹ Parties below these ages may only marry with consent of Procureur de la République (Attorney General), which will only be given under unusual circumstances. Parties below the age of majority (18) must have parental consent to marry. A woman may not remarry for 300 days after dissolution of her previous marriage without court permission unless she gives birth in the meantime or produces a medical certificate stating that she is not pregnant. To be legally recognized, the marriage must take place before a civil official at the domicile of one of the parties.⁷⁰ Domicile may be acquired for this purpose by 30 days' prior residence in an arrondissement. There must be at least two but not more than four witnesses to the ceremony. Banns are posted at the door of the town hall of the arrondissement for 10 days preceding the marriage. Medical certificates are required before the parties may be married. Marriage abroad between French citizens or between a French citizen and a foreigner is valid if in accordance with law of place where celebrated or if celebrated by certain specified consular agents.⁷¹

For marriages taking place before February 1, 1966, community property is defined to include personal property possessed at the time of marriage or acquired after marriage, even if by inheritance or gift unless donor expressed a contrary intent.⁷² Community property also includes income from any property owned at time of the marriage and all real property purchased during marriage. Real property belonging to either spouse at the time of marriage or inherited or received as gift after marriage is not community property, but real property is presumed to be purchased during marriage unless proven otherwise.

For marriages after February 1, 1966, community property does not include property acquired before marriage or during marriage through inheritance or by gift where the donor does not specifically request that gift become community property. Any form of property is presumed to be acquired by the community unless proven that it belongs to one of the spouses. Spouses may adopt the older

⁶⁸ ENGLAND LAW DIGEST § 12.10.

⁶⁹ FRANCE LAW DIGEST § 13.08 (Martindale-Hubbell European Law Digests, 2010); C. Civ. 144 (Fr.).

⁷⁰ *Id.*; C. Civ. 64, 165 (Fr.).

⁷¹ *Id.*; C. Civ. 170 (Fr.).

⁷² C. Civ. arts. 1400-1527 (Fr.).

community property regime by contract.⁷³

Antenuptial and postnuptial contracts can provide for excluding personality from community property, separate responsibility for debt, giving parties unequal shares, providing for community of all property or subject to any conditions or giving the survivor the right to withdraw a certain sum or specific thing from the assets before any division of property takes place. Upon showing of good cause and fulfillment of certain formalities, spouses may modify their marital regime by notarized act approved by civil court. Both legal and contractual regimes may be modified, but modification is only possible after two years under one regime have elapsed.

Solidarity civil covenant permits unmarried heterosexual and same-sex couples to register their union in a joint declaration which must be done at the office of the civil trial court of general jurisdiction.⁷⁴ This union allows couples to gain inheritance, housing and social welfare rights along with the ability to pay joint taxes.

Death of spouse

The surviving spouse has a right of usufruct.⁷⁵ If the decedent left children or descendants, the surviving spouse may choose to receive either usufruct on the totality of the decedent's property or ownership of one-fourth of decedent's property if all of the children were the couple's children, and ownership of one-fourth of decedent's property when one or more children are not the couple's children. If there are no children but the decedent leaves parents, the surviving spouse receives one-half of the decedent's property and each parent receives one-fourth. If only one parent remains, the surviving spouse receives three-quarters and the parent one-quarter. If there is no issue, the surviving spouse receives all the decedent's property. "Issue" includes both legitimate children and illegitimate children

Issue and ascendants have forced heirship rights over certain portions of the decedent's property (the protected portion is called the "réserve"). If the decedent has left one child or issue of one child, the réserve is one-half of the decedent's property.⁷⁶ If the decedent has left two children or issue of two children, the réserve is two-thirds of the decedent's property. If the decedent has left three children or issue of three children, the réserve is three-fourths of the decedent's property. If the decedent has left no children and one or more ascendants in both lines, the réserve is one-half of the decedent's property. If the decedent has left one or more ascendants in only one line, the réserve is one-fourth of the decedent's property. The share reserved for ascendants can be cut down to a usufruct interest if the decedent gives title to said share to the surviving spouse. If

⁷³ C. Civ. Arts. 1497 to 1501; 1503; 1511 to 1527144 (Fr.)

⁷⁴ FRANCE LAW DIGEST § 13.08; *see* Law of Nov. 15, 1999 completed by Decrees Nos. 99-1089, 1090, 1091 of Dec. 21, 1999 has completed civil code. It has added title on "solidarity civil covenant" ("Pacte civil de solidarité" PACS) which covers C. Civ. arts. 515-1 to 515-7 (Fr.).

⁷⁵ Law No. 2001-1135 of Dec. 3, 2001 and entered into force on July 1, 2002, C. Civ. art. 757 (Fr.).

⁷⁶ FRANCE LAW DIGEST § 12.07.

there are no ascendants and no descendants, there is no réserve.

Divorce

One party may be awarded monthly maintenance or a lump sum by the court to compensate for a change in living conditions created by divorce.

French law governs divorce and separation when both parties are French citizens when both parties are domiciled in France or when there is no assumption of jurisdiction under foreign law and French courts are competent to hear the action.

In the case of children, both parents have the right and duty to protect the child's security, health, and morality and to allow for the child's development. Custody is determined according to the best interest of children and may be granted to one or both parents or, in extreme cases, a third party. Each parent continues to have the same rights as before the divorce regarding education and care of child and has right to be informed of major changes affecting life of child. Each parent must also contribute to child's maintenance in proportion to own resources.⁷⁷

Trusts

The concept of trust does not exist in French law, but foreign trusts are recognized by French courts unless their terms are incompatible with French public international order.⁷⁸ Foreign trusts involving French real property are valid only as to the disposable portion of the property.⁷⁹

J. GERMANY

Marriage

The ceremony must take place before a sworn registrar.⁸⁰ Witnesses are not required. A religious ceremony may be performed in addition to the civil ceremony, also known as a *Personenstandsrecht*, but it has no legal effect. New legislation permits couples to have a religious marital ceremony performed without a civil ceremony, however, the religious unions do not give rise to the same legal rights of inheritance, tax advantages, support in cases of divorce, and standard rights of next of kin would not be enforceable as permitted by civil marriages. The parties must be at least 18 years of age to be married, but the court can give permission to marry at age 16 upon application if the future spouse is not a minor. A minor needs the consent of his or her parents to marry. A woman must wait ten months after dissolution of a marriage to remarry, but a court can grant an exception upon application.

⁷⁷ C. CIV. Arts 288, 293 (Fr.).

⁷⁸ FRANCE LAW DIGEST § 12.09.

⁷⁹ *Id.*

⁸⁰ GERMANY LAW DIGEST § 13.05 (Martindale-Hubbell European Law Digests, 2010); BGHZ 1310 (Ger.).

There are three possible regimes of marital property. The default regime in absence of agreement is the statutory marital regime of community of increase.⁸¹ In the community of increase, there is a separation of the spouses' property and separate management of the property. The increase in property value is the only common item. This community of increases is the equal to difference between amount of property of each spouse at the time of marriage and at the time of the dissolution of the marriage. The community of increases is treated differently upon dissolution of marriage by death and otherwise. Spouses' property is managed separately, but neither spouse may alienate his or her property as a whole without the consent of the other spouse. Consent may be supplied by the court if good reason is given. Property belonging to the common household cannot be sold without the consent of both spouses.

The second possible regime is common property.⁸² Upon dissolution of the marriage, each spouse is entitled to one-half of the designated common property. A notarized contract is required to designate common property. The contract must indicate who shall manage the common property. Certain property is "reserved property" which is excluded from community property. Reserved property includes gifts or bequests to one spouse and property so designated in the contract. Neither spouse can dispose of community property without the consent of the other, and neither spouse can demand division of the common property.

The third property regime is separate property, in which there is a complete separation of the spouses' property.⁸³ The parties may adopt either common or separate property regimes by antenuptial or postnuptial contract, but may not adopt a foreign property regime unless it is of a country where one spouse is a national or where one spouse had residence when the later of the marriage or the execution of the contract occurs.

The 2001 Law for Ending the Discrimination Against Homosexual Coexistence: Live Partnership, gave homosexual pairs a legal frame for living together. They must mutually agree in the presence of appropriate authorities to have partnership for life. This agreement has consequences concerning surname, obligation to pay alimony, right of inheritance and some property rights. One partner is considered as a member of the family of the other partner by law. The recognized coexistence can be annulled by court decision.⁸⁴

Death of spouse

If the decedent dies intestate and leaves issue, the surviving spouse is entitled to

⁸¹ BGHZ 1363-1390 (Ger.)

⁸² BGHZ 1415-1421 (Ger.).

⁸³ BGHZ 1414 (Ger.).

⁸⁴ GERMANY LAW DIGEST § 13.05; Law for Ending the Discrimination against Homosexual Coexistence: live-partnership (Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften) of Feb. 16, 2001, BGBl. I, p. 266 as amended gives homosexual pairs legal frame for living together. They must mutually agree in presence of appropriate authority to have partnership for life. This agreement has consequences concerning surname, obligation to pay alimony, right of inheritance and some property rights. One partner is considered as member of family of other partner by law. Partnership can be annulled by court decision.

one-fourth of the estate. If the decedent leaves only parents and their issue or grandparents, the spouse is entitled to one-half of the estate. If no issue, parents or their issue or grandparents survive, the surviving spouse inherits the entire estate. If community of increase is the marital property regime, the intestate share of the surviving spouse is increased by one-fourth of the value of the estate, even if no increase in property actually takes place.

A disinherited spouse and issue of the decedent and, if none, parents may claim one-half of their intestate shares. The testator may deprive heirs of their shares, but only under exceptional circumstances and if the ground for deprivation is named in the will.⁸⁵

Divorce

Alimony may be ordered if one spouse cannot support himself or herself for one of following reasons: care and education of child born of marriage; advanced age or sickness; inability to find adequate employment after divorce; the spouse, in expectation of marriage, had ceased or not begun his or her professional education and, immediately after divorce, starts education that will enable him or her to be self-supporting; or equity demands the grant of alimony. Upon the death of the former spouse, his or her estate is liable for continuing alimony to the surviving former spouse.

Upon divorce, if community of increase is the marital property regime, increases of respective properties are compared. If the increase of one spouse's property exceeds the increase of the property of the other spouse, the latter is entitled to claim one-half of such balance. German courts assume personal jurisdiction over the marriage if one spouse is German, if the wife at the time of marriage was German, or, if both spouses are aliens, if at least one of them is residing in Germany and a German divorce decree will be recognized by the laws governing the husband. The governing law depends on the nationality of the spouses: if both are the same nationality, the law of the nationality applies. If the spouses are of different nationalities, the law of the last common domicile applies. German law may apply if the petitioner is or was at the time of marriage a German national. A foreign divorce decree may be recognized in Germany if rendered under that law which is applicable. A foreign decree will not be recognized if it violates German public policy or if the foreign court lacks jurisdiction under German law.

Trusts

Trusts are not recognized, as there is no system of equity jurisprudence. Similar results can be reached using legal institutions such as guardians, administrators, receivers and executors.⁸⁶

⁸⁵ GERMANY LAW DIGEST § 12.07.

⁸⁶ GERMANY LAW DIGEST § 12.06.

K. GREECE

Marriage

The marriage ceremony may be either a religious service or a civil ceremony.⁸⁷ License of Mayor is required in order to perform either a civil or Christian orthodox ceremony and is granted at application of proposed spouses and after previous publication of banns. A 1982 law legalizing weddings and civil ceremonies only refers to participating “persons,” without specifying gender. On June 3, 2008, the first gay marriage ceremony was performed in Tilos. The supreme court prosecutor announced that the marriage and any other gay marriages subsequently performed would automatically be annulled and illegal. Whether or not this gay marriage and others will have legal force still remains to be determined by the legislature. A case is pending before the European Court of Human Rights regarding the legality of a statute creating registered partnerships that specifically excludes same-sex couples. To date, same-sex marriages, partnerships and unions remain illegal.⁸⁸

The parties must be at least 18 years of age to marry. The court may allow minors to marry with consent of parents with good reason and may provide its consent in place of parents’ consent. There is no law recognizing same sex partners.

Upon marriage, both parties retain their own property; however, there is a presumption that one-third of the property acquired during marriage (except through inheritance) has been acquired by the party not owning it and may be claimed by that party upon dissolution of the marriage. Personal chattels used in the household may be divided between the spouses.

Death of spouse

If the decedent dies intestate and leaves issue, the surviving spouse is entitled to one-fourth of the estate. If the decedent leaves other heirs (parents, siblings and their children and grandchildren, grandparents and their children and grandchildren, and great grandparents) but no issue, the surviving spouse’s share is one-half of the estate plus certain personal chattels. If the decedent leaves no heirs as defined above, the surviving spouse is entitled to the entire estate.⁸⁹

In the event that the decedent leaves a will, the spouse, issue (including certain classes of illegitimate children), and parents of the testator are entitled to one-half of their intestate shares. These statutory heirs may be excluded from the testator’s estate if they are properly disinherited by the testator on special grounds prescribed by law.

Divorce

⁸⁷ GREECE LAW DIGEST § 13.06 (Martindale-Hubbell European Law Digests, 2010); Law 1250 of 3/7 Apr. 1982.

⁸⁸ Athens Associated Press, *Same-sex Marriages Annulled as Illegal in Greece*, THE GUARDIAN, May 5, 2009, <http://www.guardian.co.uk/world/2009/may/05/greece-same-sex-marriage>.

⁸⁹ GREECE LAW DIGEST § 12.02.

The court may compel payment of alimony by one party if the other party is unable to support himself or herself. The extent of alimony is determined by the means of the paying party. Each party may claim one-third of property acquired during marriage by other party (except for property acquired through inheritance). The court may award the marital home to either party irrespective of ownership. Custody is determined by the court in the absence of the parties' agreement. Both parents retain the right to communicate with their children and both parents are responsible for maintenance and care of children.

Greek courts are always competent to pronounce a divorce when one of the parties is a Greek national, irrespective of the party's domicile. Greek courts may also pronounce divorce if the parties are Greek residents. Greek courts have no jurisdiction over aliens if, according to law of nationality of both spouses, such jurisdiction is not recognized.⁹⁰

Trusts

Trusts are not recognized under Greek law. The law provides that beneficiaries of testamentary trusts of assets situated abroad are taxed upon receipt of income and principal.

L. HONG KONG

Marriage

Notice of an intended marriage must be given by at least one party appearing before the Registrar of Marriages. The party must swear that there is no impediment to marriage. The marriage must be celebrated in Office of Registrar or a licensed place of worship unless a special license is issued. The parties to the marriage must be at least 16 years old. If either party is under 21 years of age and not a widow or widower, parental (or guardian) consent is required.⁹¹ There is no law recognizing same sex partners.

There is no community property system. All property belonging to or acquired by the spouse before or after marriage belongs to the spouses as if they were unmarried.⁹²

Death of spouse

If the decedent dies intestate and leaves issue, the surviving spouse inherits HK\$500,000 free of tax with 5% interest and one-half of the residue. If there are no issue but a surviving parent or sibling or sibling's issue, the spouse inherits HK\$1,000,000 free of tax with 5% interest and one-half of the residue. If there are no issue, no parents and no siblings or sibling's issue, the surviving spouse

⁹⁰ GREECE LAW DIGEST § 13.03.

⁹¹ HONG KONG LAW DIGEST § 13.05 (Martindale-Hubbell Asian Law Digests, 2010).

⁹² HONG KONG LAW DIGEST § 13.03.

inherits the entire estate.⁹³

The Inheritance Ordinance provides that any person who was wholly or substantially maintained by the decedent may apply for provision of maintenance out of the estate of the deceased within six months of the date of death. Potential applicants include a surviving spouse who has not remarried, infant son, unmarried daughter or child with physical or mental disabilities, a former spouse of the decedent who has not remarried or a partner by concubinage who has not remarried.

Divorce

Either party may make a claim against the other for financial provision, including maintenance pending suit, periodic payments, lump sum payment or settlement of property. Upon application for custody, the court may make such order as it considers fair and in the best interest of the child.⁹⁴

Hong Kong courts have jurisdiction in divorce proceedings if either party is domiciled in HK on the date the petition is filed or if either party habitually lived in HK for three years immediately prior to filing the petition⁹⁵. A foreign decree will be recognized if the decree was obtained in a country in which either spouse was habitually resident or national. A decree will not be recognized if it is contrary to public policy or obtained without notice to the other spouse or if the other spouse could not take part in the proceedings.

M. IRELAND

Marriage

The Family Law Act of 1995 governs the formalities of marriage. Three months of written notice must be given to the Marriage Registrar.⁹⁶ All marriages are registered in the Customs House, Dublin.

The minimum age for marriage is 18 years for males and females. A will is revoked by subsequent marriage unless will is made with such marriage in mind.⁹⁷ Same-sex partners are recently legally recognized by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, which was passed in July 2010 and became law on January 1, 2011. The Act allows for same-sex civil unions and gives same-sex couples rights comparable to civil marriage, and provides for same-sex cohabitating couples to have the same rights and

⁹³ HONG KONG LAW DIGEST § 12.02; Intestates' Estates Ordinance (Cap. 73), effective Oct. 7, 1971 (H.K.).

⁹⁴ HONG KONG LAW DIGEST § 13.02.

⁹⁵ *Id.*; Matrimonial Causes Ordinances (Cap. 179) (H.K.).

⁹⁶ IRELAND LAW DIGEST § 14.06 (Martindale-Hubbell European Law Digests, 2010); *see* Civil Registration Act §§ 46–47 (2004) (Ir.).

⁹⁷ IRELAND LAW DIGEST § 13.06; § 85 Succession Act, 1965 (Ir.).

obligations as heterosexual cohabitating couples.⁹⁸

Death of spouse

If the decedent dies intestate and leaves issue, the surviving spouse is entitled to two-thirds of the estate.⁹⁹ If the decedent leaves no issue, the surviving spouse is entitled to the entire estate. The Succession Act provides that even when the decedent leaves a will, the surviving spouse is entitled to one-half of the estate if the decedent leaves no children and one-third of estate if decedent leaves children.¹⁰⁰ The surviving spouse can give up this right during the decedent's lifetime by a signed, written document.¹⁰¹

The surviving spouse may require the decedent's representative to apply marital home and any household chattels toward satisfaction of his or her intestate or statutory share. The right must be exercised within six months of the required written notification of such right by the representative or within one year of the grant of representation.¹⁰²

The intestate and statutory shares can be lost if the surviving spouse was guilty of desertion or a serious offense against the decedent.¹⁰³

Divorce

Divorce has recently become permitted under the Family Law (Divorce) Act, 1996.¹⁰⁴ The Court may make orders regarding custody, property adjustment, alimony, lump sum orders and pension adjustment orders as well as other ancillary orders.

Trusts

Law regulating trusts and trustees is now governed by Land and Conveyancing Law Reform Act 2009. The Law dictates the powers given to trustees, which include the power of owner of land to convey or otherwise deal with land, power to permit beneficiary to occupy or make other use of land on such terms as trustee thinks fit and power to sell land and reinvest proceeds, in whole or in part, in purchase of land.¹⁰⁵

⁹⁸ Charlie Taylor, *Civil Partnership Signed Into Law*, IRISH TIMES, July 19, 2010, available at <http://www.irishtimes.com/newspaper/breaking/2010/0719/breaking29.html>.

⁹⁹ Succession Act, § 10, et seq. (1965) (Ir.).

¹⁰⁰ Succession Act § 111 (Ir.).

¹⁰¹ Succession Act § 113 (Ir.).

¹⁰² Succession Act § 56 (Ir.).

¹⁰³ IRELAND LAW DIGEST § 13.05.

¹⁰⁴ IRELAND LAW DIGEST § 14.03.

¹⁰⁵ IRELAND LAW DIGEST § 13.05.

N. ISRAEL

Marriage

All aspects of marriage are within the exclusive jurisdiction of Rabbinical courts for Jews and within religious courts of other denominations which are recognized religious communities for religious non-Jews. Females under age 17 are not allowed to marry unless the court orders otherwise due to special circumstances. A marriage must be registered by the person performing the ceremony. Registration is effected by filing a copy of record with the District Commissioner of the district in which the marriage is performed.

Spouses may regulate financial relations by agreement, which must be approved by the Family Affairs Court or by the Religious Court with jurisdiction over the parties in matters of marriage and divorce. Marriage does not affect parties' property rights and does not confer rights in each other's property or liability for each other's debts incurred during marriage.

A same sex marriage is not recognized by any law in Israel.

Death of spouse

If the decedent dies intestate, the surviving spouse is entitled to movable property, including vehicles and the contents of the home and: (1) if the decedent left issue or parents, one-half of the estate; (2) if the decedent left siblings or their issue or grandparents, two-thirds of the estate; (3) if the decedent left none of the above-named relatives, the entire estate. Provided that the spouse was married to the decedent for three or more years and lived with him or her in a residence included wholly or partly in the estate, the spouse inherits the whole residence or share of decedent therein and two-thirds of estate. A spouse who lived with the decedent in his or her place of residence is entitled to reside in the same premises as lessee of the legal heirs for such duration and subject to such terms as may be settled with heirs or as settled by court.¹⁰⁶

There are no restrictions on the right of disposition by will. The court in the district where decedent resided at time of death or where assets of a nonresident decedent are located is competent, but religious courts may exercise jurisdiction where all parties consent.

Divorce

The court may order maintenance and the entitled party may apply to the National Insurance Institute for payment. Rights under judgment are subrogated to Institute, which may recover from the defendant. Apart from the right to maintenance, legal separation is not recognized.

In the absence of an agreement, each spouse is entitled to one half of the total

¹⁰⁶ ISRAEL LAW DIGEST § 13.03 (Martindale-Hubbell Middle East/Africa Law Digests, 2009); *see* 1965--Inheritance Law of 1965 (Isr.).

property of both spouses excluding property possessed before marriage, property received by gift or inheritance and other non-assignable rights that the parties agree should not be taken into consideration.

Rabbinical courts have exclusive jurisdiction regarding divorce when both parties are Jews and are either domiciled in Israel or are Israeli citizens. Christian-recognized Religious Courts have exclusive divorce jurisdiction regarding Christian Israeli citizens. Muslim Religious Courts have jurisdiction over Muslim Israeli citizens and Muslim foreigners. Law of Jurisdiction in Dissolution of Marriage in Special Cases, 1969, authorizes the Chief Justice to direct that an application for divorce, which is not already within the jurisdiction of a religious court, be dealt with either by the Family Affairs Court or the Religious Court.¹⁰⁷

Trusts

Trusts are authorized under Israeli law and are governed by Law of Trusteeship, 1979. Mutual Investment Funds Law of 1961 allows establishment of mutual investment funds.

O. ITALY

Marriage

A marriage may be celebrated by a Catholic officiant and must be reported to the Office of Vital Statistics.¹⁰⁸ Non-Catholic marriages are celebrated by relevant non-Catholic ministers authorized by the Office of Vital Statistics. Civil marriages are celebrated by appropriate municipal officers. A marriage can take place only after due publication of banns.¹⁰⁹ Both parties must be at least 18 years old. A court decree may permit marriage at the age of 16.¹¹⁰ A woman may not remarry until 300 days after the death of her husband or the dissolution of a prior marriage.¹¹¹ A same sex marriage is not recognized by any law in Italy.

Marital property may be governed by contract. Where no contract exists, property of spouses acquired after marriage is under joint ownership. In absence of an agreement, each spouse maintains full control of his or her property acquired prior to marriage and is not responsible for other spouse's debts or obligations.

Death of spouse

If the decedent dies intestate and leaves no children, ascendants or siblings, the surviving spouse is entitled to the entire estate. The surviving spouse is entitled to one-half of the estate if there is only one child and to one-third if there are two or

¹⁰⁷ ISRAEL LAW DIGEST § 14.02.

¹⁰⁸ ITALY LAW DIGEST § 14.05 (Martindale-Hubbell European Law Digests, 2010); *see* Codice civile (C.c.) 116 (It.).

¹⁰⁹ C.c. 93 (It.).

¹¹⁰ C.c. 84 (It.).

¹¹¹ ITALY LAW DIGEST § 14.05.

more children. However, ascendants are in any event entitled to one-fourth of the estate.

The right of disposition by will is limited by the following statutory shares: (1) the surviving spouse inherits one-half of the estate if no children survive the decedent; (2) if the decedent leaves one child, the surviving spouse inherits one-third of the estate; (3) if the decedent leaves two or more children, the surviving spouse inherits one-fourth of the estate; and (4) if the decedent leaves ascendants, the spouse inherits one-half of the estate.¹¹² The surviving spouse is entitled to lifetime use of the family home and furnishings, if owned by decedent or by both spouses jointly.¹¹³ A surviving spouse who was separated from the decedent but has not been held responsible for the separation has the same inheritance rights. Even a guilty spouse is entitled to a lifetime annuity, which cannot exceed the alimony he or she received at the time of the spouse's death.

Divorce

Jurisdiction belongs to the court of residence of the defendant, or, if defendant resides abroad, the residence of the plaintiff. Finally, if both spouses reside abroad, any Italian court has jurisdiction. The judgment granting divorce provides also for custody of children and for alimony. The alimony obligation ceases upon remarriage of the spouse receiving alimony. Law No. 54 (2006) introduced new provisions on joint custody of children during separation period for purpose of ensuring children their rights to be brought up by both parents.¹¹⁴

Trusts

Trusts are unknown in Italian law, because a beneficial title different from the legal title does not exist. A similar result to a trust can be obtained if the testator by will leaves property to a person directing him or her to pay it to the testator's children, siblings or charities or if the testator appoints an administrator to take care of the estate left to his children during their minority.¹¹⁵ Furthermore, trusts have been regulated by the Italian legal system through the Financial Law for 2007, which introduced new regulation on taxation of trusts. The law distinguishes trusts on the basis of identification of beneficiaries—if beneficiaries are identified, any income deriving from trust is attributed to them and taxed accordingly; if beneficiaries are not identified, trust will be subject to corporate income tax by being a trust taxable entity.¹¹⁶

¹¹² C.c. 565-585 (It.).

¹¹³ C.c. 540 (It.).

¹¹⁴ ITALY LAW DIGEST § 14.02.

¹¹⁵ ITALY LAW DIGEST § 13.09.

¹¹⁶ ITALY LAW DIGEST § 13.09.

P. JAPAN

Marriage

Males must be at least 18 years of age and females must be at least 16 years of age to marry.¹¹⁷ Parental consent is required for anyone below the age of 20 to marry. Women may not remarry until six months following the dissolution or annulment of a previous marriage.¹¹⁸ Marriage occurs upon acceptance by the Family Registrar of notification of marriage signed by both parties. Two witnesses are required for notification of marriage. A religious ceremony, although it is customary, is not required and has no legal effect. No law in Japan recognizes same sex marriages.

Before marriage, the parties may provide for division of property by agreement different from that fixed by law.¹¹⁹ The agreement must be registered to have effect against third parties or legal heirs. Contracts may be cancelled between husband and wife as long as such cancellation is not inequitable to third parties. The legal property system requires spouses to share expenses of married life and assume mutual liability for acts pertaining to household matters. Property acquired by either spouse before marriage continues to be separate property. During marriage, property may be acquired separately by either spouse. Property whose ownership is unclear is presumed to be owned jointly by the spouses.¹²⁰

Death of spouse¹²¹

If the decedent dies without a will and leaves issue, the surviving spouse is entitled to one-half of the estate. If the decedent leaves no issue but ascendants, the spouse inherits two-thirds of the estate. If there are only surviving siblings, the spouse inherits three-fourths of the estate.¹²²

The spouse, issue and lineal ascendants have legally secured portions: if only the spouse and lineal descendants survive, the legally secured portion of the spouse is one-half of the estate.¹²³

Divorce

Japan allows consensual and judicial divorce.¹²⁴ Consensual divorce is obtained through entry of agreement upon Family Register Record. No formalities are required unless a dispute arises as to custody of children or division of property,

¹¹⁷ JAPAN LAW DIGEST § 13.03 (Martindale-Hubbell Asian Law Digests, 2010); Civ. C. 3, 731, 737 (Japan).

¹¹⁸ Civ. C. 738 (Japan).

¹¹⁹ JAPAN LAW DIGEST § 13.03; Civ. C. 756 (Japan).

¹²⁰ Civ. C. 762 (Japan).

¹²¹ JAPAN LAW DIGEST § 12.03.

¹²² Civ. C. 890, 900 (Japan).

¹²³ Civ. C. 900 (Japan).

¹²⁴ Civ. C. 763 (Japan).

in which case a referral is made to the family court.¹²⁵ Judicial divorce may be obtained by formal trial or a process called conciliation. Conciliation procedures permit voluntary submission of a divorce action to family court which, after investigation, is authorized to confer on a divorce agreement acceptable to the parties. Alimony is not recognized as such, although lump sum settlements which have the same objective may be granted by the court. Property acquired by joint efforts of the spouses may be divided by the court regardless of who has legal title

In case of foreigners, divorce is governed by the law of the country of the parties if they share the same nationality. If the parties have different nationalities, it is governed by the law of the common residence. If either party is Japanese with residence in Japan, Japanese law governs.¹²⁶

Trusts

Japan has a codified law of trusts which is modeled largely after Anglo-American law, but modified to conform with principles of continental law. Although trusts may be created by operation of law, they usually arise from private acts and agreements.¹²⁷

Q. REPUBLIC OF KOREA

Marriage

Both males and females must be at least 18 years of age to marry.¹²⁸ Minors below the age of 20 need parental consent to marry.¹²⁹ Women cannot remarry for six months after dissolution of a previous marriage. Marriage becomes effective upon filing of a notification of marriage with the family registrar.¹³⁰ A ceremony is not required but is customary. The notification of marriage must be signed by both parties and two witnesses over the age of 20. Marriage has no effect on the family name of either spouse. Personal relations between spouses are ruled by the principle of equality of rights. No law in Korea recognizes marriage between same sex partners.

The parties may make a property agreement before marriage.¹³¹ The agreement is not valid against successors or third parties unless it is registered prior to marriage, and it cannot be altered during marriage without court consent.¹³² Contracts between spouses may be voided by either spouse at any time but only if the rights of third parties are not prejudiced. In the absence of an agreement,

¹²⁵ Civ. C. 766, 768 (Japan).

¹²⁶ HOREI 16 (Japan).

¹²⁷ Civ. C. 1,2 (Japan).

¹²⁸ C.C. 807 (Korea).

¹²⁹ C.C. 808, C.C. 4 (Korea).

¹³⁰ C.C. 812 (Korea).

¹³¹ REPUBLIC OF KOREA LAW DIGEST § 13.03 (Martindale-Hubbell Asian Law Digests, 2010).

¹³² C.C. 829 (Korea).

property acquired by either spouse before marriage continues to be separate property. Property may be acquired separately by either spouse during marriage. Separate property is managed separately, and spouses may profit separately from property. Property is presumed to be jointly owned unless proved otherwise. Spouses are jointly and severally liable for each other's debts with respect to daily household matters unless third party is notified in advance.¹³³

Death of spouse

If the decedent dies intestate, and is survived by a spouse and issue or ascendants, the spouse must share the estate with the lineal descendants or ascendants. The surviving spouse's share is 50% greater than the others' shares. If the decedent leaves a will, the spouse can elect against the will to take his or her legally secured portion, which is one-half of the intestate share.

Divorce

Divorce may either be made by mutual consent or granted by the court.¹³⁴ Alimony and support can be awarded by the court. Even in cases where alimony is not awarded, one spouse may still demand partitioning of the assets. If the parties do not reach an agreement, the family court decides on the amount and method of partitioning, considering the amount of assets acquired through the efforts of both parties and other circumstances.¹³⁵ Custody of children is decided by mutual consent, but in absence of consent, the parties may petition the court to decide on the terms of custody.¹³⁶

A divorce involving a foreigner is governed by the law of the husband's nationality at the time the facts forming the grounds for divorce arise. Divorce cannot be granted unless Korean law also recognizes those facts as grounds for divorce.¹³⁷

R. MALAYSIA

Marriage¹³⁸

Marriage in Malaysia is governed by Law Reform (Marriage and Divorce) Act, however the Act does not apply to Muslims or persons married under Muslim law, any native of Sabah or Sarawak or any aborigines of West Malaysia whose marriage and divorce is governed by native customary law.

The parties must notify the Registrar of Marriages in the district in which they

¹³³ C.C. 832 (Korea).

¹³⁴ C.C. 834, 836 (Korea).

¹³⁵ C.C. 839.2 (Korea).

¹³⁶ C.C. 837 (Korea).

¹³⁷ REPUBLIC OF KOREA LAW DIGEST § 13.02.

¹³⁸ MALAYSIA LAW DIGEST § 13.03 (Martindale-Hubbell Asian Law Digests, 2010).

have resided for at least 7 days before the date that notice is given. The notice is then posted by the Registrar until he grants the marriage certificate (at the earliest, 21 days after the notice is posted) or until three months have elapsed, whichever is earlier. The Chief Minister may dispense with notice upon good cause and urgent need. The marriage must be solemnized while marriage certificate is valid (6 months) by any person who is authorized to do so. Males must be at least 18 years old and females must be at least 16 years old to marry. A special license is required for males under age 18 and females under age 16 to marry. Persons under the age of 21 must obtain written consent of his or her father, or, if he is deceased or illegitimate, from his/her mother. If both parents are dead, consent must be obtained from the person standing in loco parentis. If parties are not male and female, the marriage is void.

Death of spouse

If the deceased is the husband and he leaves neither will nor issue, the widow inherits one-half of the estate.¹³⁹ The remainder of the estate goes to the parents and if none, to siblings; and if none, to grandparents. If there are no parents, siblings or grandparents, the widow inherits the entire estate. If the deceased husband left issue, the widow inherits one-third of estate and the remainder is distributed to the children. If the deceased is the wife and she leaves issue, the widower inherits the entire estate. Muslims are not subject to the aforementioned intestate succession rules.¹⁴⁰

Divorce¹⁴¹

The court has the right to restrict petition for divorce within the first two years of marriage with the exception of hardship cases and conversion to Islam. The court has the power to decide on alimony, property distribution and custody of children.

Trusts

Trustee Act (Act 208) limits number of trustees to four, except in case of property vested in trustees for charitable religious purposes. See 1 MALAYSIA LAW DIGEST 11.05.

¹³⁹ See Distribution Act (Act 300) (West Malaysia and Sarawak) for distribution of movable property in intestacy cases.

¹⁴⁰ MALAYSIA LAW DIGEST § 11.03.

¹⁴¹ MALAYSIA LAW DIGEST § 12.02 (Divorce is governed by the Law Reform (Marriage and Divorce) Act (Act 164)).

S. MEXICO¹⁴²

Marriage

Marriages must be performed by an official of the civil registry. The parties must file a written application, a certificate signed by two witnesses stating no impediments to marriage exist, a medical certificate showing parties to be free of diseases that are impediments to marriage and a statement as to whether parties are marrying under system of separation of property or community property.¹⁴³ The parties and witnesses must acknowledge their signatures in front of the official, and the ceremony is performed by him or her within eight days thereafter. . Minors under 18 years of age must have parental or judicial permission to marry.¹⁴⁴ In most states, women may not remarry until 300 days have elapsed from dissolution of a former marriage, unless she gives birth in the meantime.¹⁴⁵ Parties in divorce by mutual consent cannot remarry for one year. Since March 2010, Mexico City provides for same-sex marriage, and in August 2010, the Mexican Supreme ruled that all 31 Mexican states must recognize same-sex marriages registered in Mexico City, even though the states are not required to enact similar same-sex marriage provisions.¹⁴⁶

Under Federal law (applicable in the Federal District and territories), there are two possible systems of owning the marital property. In a conjugal partnership the marriage articles must state assets and liabilities of the partnership, the property and income included in the partnership and who is to administer the community property and with what powers.¹⁴⁷ In default of such designation, the community property will be administered jointly. Under the separation of property regime, each spouse has full administrative power over his or her property and income. This system may be adopted before or after marriage by voluntary act of the spouses or by judgment of the court. The system may apply to all or part of the spouses' property including property owned at marriage and property received afterward.¹⁴⁸

Death of spouse

If the decedent dies intestate and leaves issue, the issue are entitled to the entire estate, unless the surviving spouse owns less property than one child's share.¹⁴⁹ In that case, the surviving spouse is entitled to enough property to make up the

¹⁴² Each state in Mexico determines its marriage and divorce requirements. See Embassy of the United States Mexico City, Mexico, mexico.usembassy.gov/eng/eacs_marriage.html.

¹⁴³ MEXICO LAW DIGEST § 13.03 (Martindale-Hubbell North American Law Digests, 2010).

¹⁴⁴ MEXICO LAW DIGEST § 13.05.

¹⁴⁵ See http://mexico.usembassy.gov/eng/eacs_marriage.html for more information.

¹⁴⁶ David Agren, *Mexican States Ordered to Honor Gay Marriages*, NEW YORK TIMES, August 10, 2010, <http://www.nytimes.com/2010/08/11/world/americas/11mexico.html>.

¹⁴⁷ MEXICO LAW DIGEST § 13.03.

¹⁴⁸ MEXICO LAW DIGEST § 13.03.

¹⁴⁹ MEXICO LAW DIGEST § 12.05.

difference. If the decedent does not leave issue, the spouse is entitled to one-half of the estate and ascendants are entitled to the other half. If the decedent does not leave issue or ascendants but leaves siblings, the spouse is entitled to two-thirds of the estate and the siblings are entitled to the remainder. Only if the decedent does not leave issue, ascendants or siblings is the spouse entitled to the entire estate.¹⁵⁰

The testator may freely dispose of his estate, but must leave part of his estate to the following persons if they have insufficient property of their own: (1) descendants under 18 to whom testor has legal obligation to provide economic support; (2) descendants who are unable to work; and (3) the surviving widow while she is unmarried and living honorably and the surviving widower if he is unable to work.¹⁵¹

Divorce

Alimony and support are decided by the court of marriage.¹⁵² In case of abandonment, the domicile of the abandoned party determines the proper court. The innocent wife is entitled to alimony if she remains unmarried and lives honorably.¹⁵³ The innocent husband is entitled to alimony only if he is indigent and unable to work. The judge makes determination of custody and awards children to the innocent party. If both parties are guilty, children are placed into the custody of grandparents or of guardian.

Trusts

In recent years Mexico has adopted, with substantial modifications and restrictions, some of the principles of the Anglo-American law of trusts. Only banking institutions may act as trustees.¹⁵⁴

T. MONACO

Marriage

Monegasque law requires that one party must be a resident of Monaco for 30 prior to a marriage. Parties must submit proof of residency, certified birth certificates, if previously married, a certified copy of the final divorce decree or death certificate if the prior marriage ended due to death of a spouse, a translation of any foreign documentation submitted countersigned by the consuls of the country or countries in which the couple to be married are subjects, and a certificate of publication of banns.¹⁵⁵ The publication of banns must be posted on the door of the Town Hall of

¹⁵⁰ *Id.*; CC 1281-1294, 1599-1791 (Mex.).

¹⁵¹ MEXICO LAW DIGEST § 12.09; CC 1295-1598 (Mex.).

¹⁵² MEXICO LAW DIGEST § 13.02.

¹⁵³ MEXICO LAW DIGEST § 12.09.

¹⁵⁴ MEXICO LAW DIGEST § 12.08.

¹⁵⁵ See Official Government Website of Monaco, "Living in Monaco Resources and Services: Employment/Social/Health: Family-Marriage,"

(continued)

the principality where the wedding is to be held for ten days, including two Sundays.

Divorce

Monegasque law recognizes pre-marital contracts. Spouses can opt by contract to hold assets separately or jointly before or during the marriage. Absent a pre-marital contract the statutory regime of limited community of goods applies, under which assets of each spouse acquired before marriage or by inheritance or gift during the marriage remain the private property of each spouse. Assets acquired during the marriage are divided equally among the parties.

Monegasque courts may not force the sale of marital property upon divorce. The consent of both spouses is required for the sale of property in the event of a matrimonial dispute.

Death of a Spouse

If one spouse dies, the surviving spouse's estate consists of his/her separate property and half of the assets acquired other than by gift or by inheritance of the deceased during the marriage.

Monaco recognizes three types of wills: authentic, holographic, and secret.¹⁵⁶ An authentic will must be read out to the testator before one Notary and four witnesses. A holographic will must be hand-written by the testator, signed, and dated. A secret will must be signed by the testator, sealed, and handed to a Notary in a sealed envelope before four witnesses.

Monaco recognizes foreign wills, under section 214 of Monegasque law, if the will is valid in the country of deceased and adheres to specified rules, including, among other things, that the documents must be in French and the trusts cannot be implied.¹⁵⁷ If one party to a marriage contracted in a common-law country dies in default of a specific marriage contract, protected and/or forced heirs may raise a valid claim against all assets registered in the name of the deceased spouse, and one half of the assets registered jointly under the names of both spouses. Thus the surviving spouse has no rights to continue living in the marital home if it is registered solely in the name of the deceased spouse, or to other assets registered solely in the name of the deceased if they were permanent residents of Monaco.

Trusts

Monegasque law protects the rights of the family, and particularly children. An individual's assets on death consist of the reserved portion and the disposable portion. The reserved portion must go to the protected forced heirs, or the

(continued from previous page . . .)

[http://www.gouv.mc/devwww/wwwnew.nsf/1909\\$/d21fc70832487511c1256f940039fbdeg?OpenDocument&Count=10000&InfoChap=%20Employment%20%E2%80%93%20Social%20-%20Health&InfoSujet=Marriage&11Gb](http://www.gouv.mc/devwww/wwwnew.nsf/1909$/d21fc70832487511c1256f940039fbdeg?OpenDocument&Count=10000&InfoChap=%20Employment%20%E2%80%93%20Social%20-%20Health&InfoSujet=Marriage&11Gb).

¹⁵⁶ See FRANCE LAW DIGEST § 12.10.

¹⁵⁷ See 2-mCO Tax Havens of the World MCO-2 Investment and Capital Incentives (MB 2011).

surviving children of the deceased, regardless of what is written in the will.¹⁵⁸ The execution of a will, however, can override the rights of other family members that are not children.

If a person dies intestate, the estate must be distributed between the surviving members of the family as follows:¹⁵⁹

- Spouse and one child – one half each
- Spouse and two children – one third each
- Spouse and three or more children – one quarter to the spouse, and the remaining three quarters to the children
- No spouse – equal shares to the children
- No spouse or surviving children – equal shares to the grandchildren
- No spouse or decedents – the reserved portion goes to the surviving ascendants.
- No spouse, descendants, or ascendants, equal shares distributed between collateral relatives
- No family members can be found – estate goes to the government.

Incestuous and illegitimate descendants participate in the distribution of the estate under the reserved right principle, however, their portions are smaller than those granted to legitimate descendants.¹⁶⁰

U. THE NETHERLANDS

Marriage

Only civil marriages before a registrar of marriages are legally binding. At least two witnesses and at most four witnesses are needed. Religious ceremonies are permitted only after civil marriages and have no legal consequences. Notification of marriage is made by the parties in person to the municipal registrar at the residence of one of the parties. If both parties reside outside of the Netherlands and one party is a Dutch citizen, the registrar in The Hague may be notified. The registrar requires birth certificates, a statement with names and addresses of

¹⁵⁸ FRANCE LAW DIGEST § 12.07.

¹⁵⁹ See FRANCE LAW DIGEST § 12.04.

¹⁶⁰ C.CIV. 602-613 (Monaco); See Official Website for Monaco Minister of State, www.legimonaco.mc; See also, Official Website for Monaco Government, www.gouv.mc.

witnesses and the act of notification. The marriage ceremony may not take place less than fourteen days after notification or more than one year after notification (unless new notice is given). The marriage must be registered in the local marriage register. Both parties must be at least 18 years of age unless the Minister of Justice gives dispensation or the parties are at least 16 years of age and the female is either pregnant or has given birth. Minors must have parental/guardian consent to marry.

Community of property is the default property system. Not included in the community are gifts and bequests, assets and liabilities especially attached to one spouse and pension claims. Matrimonial property contracts are recognized if made before marriage. To enter into such a contract during marriage, the parties must have the consent of the court. The contract must be signed before a notary and witnesses in the form prescribed by law. The contract must then be registered in the public register of marital property in order to be effective against third parties. The married couple is free to choose any property regime, provided that contract provisions do not attribute a bigger share of liabilities of spouse than his or her share of assets, do not prejudice parental rights or the surviving spouse's statutory right and are not otherwise contrary to law. The Dutch civil code provides many possible property systems limiting the community, but the most common is complete separation of all property. (Matrimonial property contracts in general are rarely used in the Netherlands.) The will of a single person is not annulled or revoked automatically by a subsequent marriage.

As of Jan 1, 2001, two homosexual individuals can enter into marriage. Conditions and consequences are the same as for marriage between a man and a woman. Non-Dutch partners who both live abroad cannot marry in the Netherlands.¹⁶¹

Death of spouse

Unless otherwise provided in last will, the surviving spouse acquires all property forming part of the estate.¹⁶² Payment of debts is chargeable to the surviving spouse and goods of the children are not chargeable for such debt. Every child receives a monetary claim payable by the surviving spouse corresponding to the worth of the child's share in the estate. Dutch law does not recognize illegitimate children.¹⁶³

Divorce

Alimony is based on the financial need and means of other spouse, not fault. A finding of financial need may be affected by the duration of marriage, the amount of time spent living together and the standard of living during marriage. The parties may set the amount of alimony in a divorce agreement. Such amount may be altered by the court in case of changed circumstances. Alimony may not be imposed for longer than 12 years after the date of registration of the divorce

¹⁶¹ NETHERLANDS LAW DIGEST § 13.07 (Martindale-Hubbell European Law Digests, 2010).

¹⁶² NETHERLANDS LAW DIGEST § 12.04.

¹⁶³ *Id.*

decree. If the marriage lasted for less than five years without children, the maximum period of alimony is reduced to the period of marriage. Within three months of the expiration of alimony, the party receiving alimony may petition court to grant a new period of alimony. The obligation to pay alimony ends at remarriage or cohabitation comparable to marriage of the party entitled to alimony.

In the absence of an agreement, the parties divide the community property into two equal parts. The parties may agree to divide property unequally.¹⁶⁴

The best interest of the child is the standard for deciding custody. The court may grant custody to either parent or to parents jointly upon common request. A minor child over the age of twelve will be heard by the court with regard to visitation rights. The parent without custody will be ordered by the court to contribute to the costs of care and education according to his means. The parties may settle all issues arising from divorce (alimony, property division, custody, visitation, etc.) in a written divorce covenant. Upon request of the parties, the court may incorporate this covenant into a decree of divorce to make it enforceable. The divorce decree must be registered (by request of one party) in order to have effect. If the decree is not registered within six months, it is rescinded by law.

Dutch courts have jurisdiction if at the time the request for divorce is filed either or both parties are Dutch citizens or either party has had permanent residence in the Netherlands for twelve months or the Dutch spouse has had such residence for six months. If both parties live outside of the Netherlands, The Hague has jurisdiction. A foreign divorce decree will be recognized if granted according to due process or if the other party has acquiesced. Foreigners may choose Dutch law to apply to them. Otherwise, foreigners are treated according to their common national law. If parties have different nationalities, the law of common residence is applied. If there is no common residence, Dutch law applies.

Trusts¹⁶⁵

Trusts are not provided for in Dutch law, but other devices are available to achieve similar results: (1) Fidei-Commis: Subject to forced heirship rules favoring children, the estate will vest in child for life and thereafter in child's children. This can also be arranged with a sibling as life beneficiary and the sibling's children as remaindermen; (2) Fidei-Commis de Residuo: Subject to forced heirship rules favoring children, the testator may provide in his or her will that any property remaining at an heir's death will go to the individual designated in testator's will; (3) Administration: the testator may provide that the estate or part thereof is administrated by an administrator for a term of years or for the heir's life; (4) Fiduciaries: Assets may be transferred to the fiduciary, who acquires legal title. Fiduciaries distribute income and principal to the beneficiaries as set forth in the fiduciary agreement. If foreign trusts comply with the criteria in The Hague Convention on Trusts (1986), Dutch courts will

¹⁶⁴ NETHERLANDS LAW DIGEST § 13.04.

¹⁶⁵ NETHERLANDS LAW DIGEST § 12.07.

recognize them.

V. NEW ZEALAND

Marriage

Marriage is governed by the Marriage Act of 1955.¹⁶⁶ Notice of marriage must be given by one party to the registrar of the district where one of parties has lived for at least three days. The notice must contain all details of the parties and of the intended marriage. The party giving notice must appear personally before the registrar and declare that there is no impediment to marriage. Once the registrar has issued the certificate, the marriage may be celebrated before anyone duly authorized or before the registrar. The parties must be at least 16 years old. Parties under 18 years of age must have the consent of parents, guardians or court. Civil Unions are governed by the Civil Union Act of 2004. The Civil Union Act reflects all provisions of the Marriage Act of 1955 and applies to heterosexual and same-sex couples.

Spouses hold equal shares of matrimonial property. They may enter into property agreements before or during marriage subject to important formalities. Any agreement is void if the formalities are not observed or if court concludes that the agreement is unjust.

Death of spouse

If the decedent dies intestate and leaves issue, the surviving spouse is entitled to all personal property, the amount of NZ \$121,000 (with 7.5% yearly interest from date of death) and one-third of the residue.¹⁶⁷ If the decedent leaves parents but no issue, the surviving spouse is entitled to all personal property, the amount of NZ \$121,000 (with 7.5% yearly interest from date of death) and two-thirds of the residue. If the decedent leaves no issue and no parents, the surviving spouse takes the entire estate.

If the decedent does not provide adequately in his will for the spouse, his children, and, in certain circumstances, stepchildren, parents or grandchildren, the court may, upon application, order such provisions to be made out of the estate as the court sees fit. (Family Protection Act of 1955). An application must be made within 12 months of the grant of administration. The court has absolute discretion as to the making of the order. The size of the provision depends on the size of the estate and the circumstances of the applicant.¹⁶⁸

Divorce

Each party is liable to maintain the other to the extent that the other party cannot

¹⁶⁶ NEW ZEALAND LAW DIGEST § 14.05 (Martindale-Hubbell Asian Law Digests, 2010).

¹⁶⁷ NEW ZEALAND LAW DIGEST § 13.04; Administration Act 1969 (N.Z.).

¹⁶⁸ NEW ZEALAND LAW DIGEST § 13.08.

meet all of his or her reasonable needs.¹⁶⁹ The Family Court can order periodic payments or a lump sum distribution. Maintenance ends after a reasonable period.¹⁷⁰

Matrimonial property is equally divided. An exception to the equal division rule exists where extraordinary circumstances make equal sharing of home and family property repugnant to justice. In such case, each spouse's share is determined in accordance with the contribution made to the marriage partnership, which includes childcare and management of household. Misconduct is irrelevant unless it is gross and palpable and significantly affects the value of matrimonial property. Another exception to the equal division rule exists for marriages that lasted for less than three years.¹⁷¹

Overseas decrees are recognized where one party was domiciled in that country at the time of order or where the foreign court exercised jurisdiction on basis of: (1) continuous residence for at least two years by one party; (2) nationality or citizenship; (3) domicile of the husband immediately prior to desertion or deportation; (4) domicile of the husband as of the date of the agreement; or (5) recognition of the decree in courts of the country in which at least one party is domiciled.¹⁷²

Trusts

Trusts are authorized under New Zealand law which is modeled after English trust law.¹⁷³

W. NORWAY

Marriage

The ceremony must be performed either in a church or before a magistrate and is valid as long as two witnesses are present. The parties must be at least 18 years of age or have consent of his parents and permission from the County Governor. One who is suffering from a contagious venereal disease may not marry unless the other person is informed and both have been counseled by a doctor. There are no restrictions on marriage with a foreigner.

In the absence of an agreement to the contrary, community of goods is the rule. Property belonging to both partners at the time of marriage and after-acquired property is held in a community of goods. Each spouse is free to dispose of the goods that he or she brought into the community. Communal real property may not be alienated or mortgaged without the consent of the other spouse if it is the

¹⁶⁹ Applies to marriages, civil unions and de facto relationships.

¹⁷⁰ § 37-43 Family Proceedings Act 1980 (N.Z.).

¹⁷¹ Property (Relationships) Act of 1976 (N.Z.).

¹⁷² § 44 Family Proceedings Act 1980 (N.Z.).

¹⁷³ NEW ZEALAND LAW DIGEST § 13.07.

marital residence or one spouse's place of business. If one spouse diminishes property through neglect or mismanagement, the other spouse may be compensated upon separation of the property. A marriage contract may provide for separate property. The contract must be in special form called "ektepakt" to be valid, i.e. it must be in writing, signed, certified by two witnesses and registered. The contract may be made before or during marriage. A marriage contract may declare that all community property is the property of one spouse. Profits from separate property remain separate and gifts from third persons may be separate property.

Under the "Partnership Law," passed in 1993, same sex partners were permitted to register as cohabitants, giving same sex partners civil union status. In June 2008, Norway's Parliament adopted a new marriage law allowing same sex couples to marry and adopt children, and for lesbian couples to be artificially inseminated. The new law took effect on January 1, 2009 making Norway the sixth country in the world to grant same sex couples equal rights with respect to marriage as heterosexual couples¹⁷⁴.

Death of spouse

In the case of intestacy, if there are issue, the surviving spouse is entitled to one-fourth of the estate. If there are no issue but a surviving parent, sibling, or sibling's issue, the surviving spouse is entitled to one-half of the estate. If none of the aforementioned relatives survive, the surviving spouse is entitled to the entire estate.¹⁷⁵

The surviving spouse has the right to at least NOK 164,000 if the decedent leaves issue and at least NOK 246,000 if the decedent leaves no issue. The surviving spouse has the right to continue possession of community property. The marriage contract may provide that the surviving spouse may take possession of separate property subject to consent of decedent's issue.

Any person who leaves issue can only dispose of one-third of his or her estate by will.

Divorce

Alimony may be decreed by the court if a party cannot maintain himself or herself out of his or her own income. Community property is split evenly. Each spouse can claim as separate property brought into marriage and property brought into the community by gifts or heritage.

The standard used to decide custody is the best interests of the child. The mother is often given custody, especially if the child is young.

Trusts

¹⁷⁴ NORWAY LAW DIGEST § 13.06 (Martindale-Hubbell European Law Digests, 2010).

¹⁷⁵ NORWAY LAW DIGEST § 12.03.

Trusts are not authorized under Norwegian law.

X. PERU

Marriage¹⁷⁶

The parties must apply to the mayor of the domicile of either party or to the chief of the civil registry in the capital of the country or province. The announcement of the proposed marriage is posted for eight days and published once in the newspaper. This requirement may be waived by an official for good reason. If there is no opposition or if opposition is rejected, the ceremony may be performed by the mayor, a civil official, Catholic chaplain or other as the mayor may delegate. The marriage may be performed by a priest, but the priest must immediately send the certificate of marriage to the nearest civil registry. Males and females must be at least 16 to marry, but must have parental consent if they are not yet 18.¹⁷⁷

Marriage creates a property community which cannot be renounced.¹⁷⁸ It comprises (1) income from separate and community property, (2) property purchased with community funds, even if in the name of one of the spouses, (3) property acquired by work of either spouse and (4) improvements on separate property made at cost of community property or by industry of either spouse. All property is presumed to be community property unless it is proven otherwise. Spouses cannot contract with each other regarding community property. Property owned at the time of the marriage and gifts received during marriage constitute separate property of each spouse, which is administered freely and is not liable for the debts of the other.

Same-sex marriage is not recognized by law.

Death of spouse

In the case of intestacy, the surviving spouse is entitled to the same share as a child, but the share is reduced by amount of spouse's interest in community property. If ascendants inherit, the spouse is entitled to the same share as received by them. A former or separated spouse has no inheritance rights.¹⁷⁹

A testator with descendants or a spouse must leave them two-thirds of his or her

¹⁷⁶ PERU LAW DIGEST § 13.08 (Martindale-Hubbell South American Law Digests, 2008); C.C. 234, 237, 239-294, 2075-2080 (Peru).

¹⁷⁷ PERU LAW DIGEST § 13.07; see generally, C.C. 20-23, 42-46, 418-472, 502-563, 2070 (Peru); Code of the Children and Adolescents, Law 27337 of Aug. 7, 2000 as am'd and its regulations Sup. Decree 011-2005-MIMDES of Nov. 11, 2005 as am'd) (Peru).

¹⁷⁸ PERU LAW DIGEST § 13.06; see generally, Peru Const. art. 5; CC. 4, 26, 287-326, 2077-2080 (Peru); C. Com. 6-12 (Peru).

¹⁷⁹ PERU LAW DIGEST § 12.04; See Const. art. 2 §§ 16 and 6, C.C. 660-685, 815-880, 2041, 2042, 2100, 2101 (Peru).

estate and may dispose freely of only one-third.¹⁸⁰

Divorce¹⁸¹

Alimony not exceeding one-third of the payor spouse's income is allowed to an innocent spouse if the payor spouse is guilty and the innocent spouse has insufficient property and cannot work. An indigent spouse is entitled to alimony even if guilty. Alimony rights cease upon remarriage of the recipient spouse.

In dividing property, separate property is set aside and the balance is evenly divided between spouses. The judge may award damages to the innocent spouse in special cases.

Trusts¹⁸²

Trusts are authorized by Peruvian law, but only banks may serve as trustees. In general, trusts may not last for more than 20 years.

Y. PORTUGAL

Marriage

Marriage of a Portuguese citizen abroad must be registered with a Portuguese consulate and subsequently with the Central Civil Registry Department to produce effects in Portugal.¹⁸³

Antenuptial agreements are recognized.¹⁸⁴ Marriage after June 1967 results in a community property of after-acquired assets. Each spouse is the administrator of separate property and of specified property owned in common; otherwise, administration of common property is joint. The consent of both spouses is required for disposition of the marital home and real property. For foreigners the marriage regime is defined according to common national law of spouses at date of marriage, or if none, by the law of common residence at time of marriage, or if none, by law of first common marital residence.

.In May 2010 Portugal became the 6th European state to legalize gay marriage.¹⁸⁵

¹⁸⁰ PERU LAW DIGEST § 12.08, See also C.C. 686-814, 2039, 2040, 2094 (Peru).

¹⁸¹ PERU LAW DIGEST § 13.05; C.C. 24, 348-360, 382, 2070, 2081, 2082 (Peru).

¹⁸² PERU LAW DIGEST § 12.07; Law 26702 of Dec. 6, 1996, arts. 241-274 as am'd (Peru).

¹⁸³ PORTUGAL LAW DIGEST § 13.07 (Martindale-Hubbell European Law Digests, 2010).

¹⁸⁴ PORTUGAL LAW DIGEST § 13.05.

¹⁸⁵ Michael Winter, *Portugal is 6th European Nation to Legalize Gay Marriage*, USA TODAY, May 17, 2010, <http://content.usatoday.com/communities/ondeadline/post/2010/05/portugal-is-6th-european-nation-to-legalize-gay-marriage/1>.

Death of spouse

The surviving spouse is entitled to maintenance out of the income of the estate. In case of intestacy, the order of succession is as follows: (1) surviving spouse and descendants, per stirpes, (2) surviving spouse and ascendants, (3) siblings and their issue and (4) other collaterals.

The surviving spouse, descendants and ascendants are obligatory heirs. The testator may not dispose of more than: (1) One-third of the estate when the nearest heirs are the spouse and one or more issue, or the spouse and one or two parents, or two or more issue; or (2) one-half of the estate when the nearest heirs are the spouse or one or more issue or parents.

Divorce¹⁸⁶

Divorce may be obtained through mutual consent of both spouses. Each party is entitled to apply for alimony.

Trusts

Trusts are not provided for under Portuguese law except for Madeira offshore interests.

Z. RUSSIAN FEDERATION

Marriage

Partners may wed one month after filing an application with the Bureau for Registration of Acts Affecting Civil Status.¹⁸⁷ The rights and obligations of spouses attach upon registration.¹⁸⁸ Partners must be at least 18 years old, or 16 in extraordinary circumstances. Same-sex partners are not recognized by law.

Property acquired before marriage is separate property and may be alienated without permission from the other spouse.¹⁸⁹ Non-luxury items for personal use, inheritances and gifts to one spouse are separate property as well. Property acquired after marriage is joint property, as are luxury items, even if they are for personal use. Antenuptial agreements in written and notarized form are recognized.

Death of spouse

In case of intestacy, the surviving spouse, children, and parents are the first category of heirs, who take equal shares in the estate. If the surviving spouse is

¹⁸⁶ PORTUGAL LAW DIGEST § 13.05; *see* Arts. 1773, 1781, 1795 C.C. (Peru).

¹⁸⁷ RUSSIAN FEDERATION LAW DIGEST § 14.07 (Martindale-Hubbell European Law Digests, 2010).

¹⁸⁸ RUSSIAN FEDERATION LAW DIGEST § 14.07.

¹⁸⁹ RUSSIAN FEDERATION LAW DIGEST § 14.07.

unable to earn income, he or she may claim at least two-thirds of the intestate share.

Divorce

The wife has a right to alimony for the duration of pregnancy and for three years after birth. During the pregnancy and within one year after birth the husband needs the wife's consent for a divorce. The court decides property distribution upon the request of one or both spouses.

Trusts

Trusts are authorized with some limitations.¹⁹⁰ The trustee may not be a beneficiary. Trusts may not last for more than five years.

AA. SINGAPORE

Marriage¹⁹¹

The parties must be at least 21 years of age and one party must be a resident of Singapore for at least 15 days before the date of notice. A 21-day period of notice of intended marriage is required before the Registrar of Marriages will issue a marriage license. Notice may be dispensed with if there is urgent need. The marriage license is valid for three months from the date of notice. The marriage must be registered after ceremony.

Spouses have equal rights in running the matrimonial household. The wife may apply to court for maintenance if husband refuses to provide her with reasonable maintenance. Islamic law applies to Muslim marriages. Same-sex partners are not recognized by law.

Death of spouse¹⁹²

If the decedent dies intestate and leaves no issue and no parent, the surviving spouse is entitled to the entire estate. If there are issue, the spouse inherits one-half of the estate. If a parent survives but no issue, the spouse inherits one-half of the estate. If the surviving spouse was dependent by reason of mental or physical disability, he or she can apply to the Court for maintenance paid out of the decedent's estate. This is, however, not allowed if the spouse has been given two-thirds of the income of the net estate and the only other dependents are children. The law of Islamic Inheritance applies to Muslims.

¹⁹⁰ RUSSIAN FEDERATION LAW DIGEST § 13.05.

¹⁹¹ SINGAPORE LAW DIGEST § 12.05 (Martindale-Hubbell Asian Law Digests, 2010).

¹⁹² SINGAPORE LAW DIGEST § 11.03.

Divorce

The parties must have been married for at least three years before a court can grant divorce, unless exceptional depravity was shown.¹⁹³ Either party must be domiciled in Singapore at the beginning of the proceedings or be habitually resident in Singapore for three years immediately preceding the beginning of the proceedings.

Trusts

Trusts are authorized under the Trustees Act.¹⁹⁴

BB. SOUTH AFRICA

Marriage

The parties must be at least 18 years of age to marry without the consent of their parents or a guardian. Same-sex marriages are only allowed in terms of the Civil Union Act (passed November 30, 2006). Couples marrying in terms of the Civil Union Act may choose whether their union is called a civil partnership or a marriage partnership. Couples joined in a marriage partnership in terms of that act enjoy the same privileges as couples married in terms of the Marriage Act.¹⁹⁵

Antenuptial agreements are recognized. The spouses may modify their matrimonial property regime at any time upon application to the High Court. There are two regimes for matrimonial property: (1) community of property: both spouses have equal rights regarding administration of joint property, but some actions require consent of both spouses and; (2) accrual regime: except for assets specifically excluded, that spouse whose estate shows no accrual or lesser accrual than the estate of other spouse during marriage has a claim against other spouse for one-half of the difference. If the husband is domiciled in South Africa at time of marriage, South African law applies to treatment of property regardless of where marriage took place.¹⁹⁶

Death of spouse

If the decedent leaves no will and there are no issue, the surviving spouse inherits the entire estate.¹⁹⁷ If there are issue, the surviving spouse inherits the greater of a child's share or 125,000 rand. The surviving spouse is statutorily entitled to one-half of the joint estate by reason of community property. Definition of "spouse" includes husband and wife married according to civil marriage, as well as partner

¹⁹³ SINGAPORE LAW DIGEST § 12.02; WOMEN'S CHARTER (CAP. 353).

¹⁹⁴ SINGAPORE LAW DIGEST § 11.05; CAP. 337.

¹⁹⁵ SOUTH AFRICA LAW DIGEST § 13.08 (Martindale-Hubbell Middle East/Africa Law Digests, 2010); Recognition of Customary Marriages Act (No. 120 of 1998) (S. Afr.).

¹⁹⁶ See SOUTH AFRICA LAW DIGEST § 13.05; *see also*, Matrimonial Property Act (No. 88 of 1984) (S. Afr.).

¹⁹⁷ SOUTH AFRICA LAW DIGEST § 12.04; Intestate Succession Act (No. 81 of 1987) (S. Afr.).

to civil union, and polygamous Muslim marriage.¹⁹⁸

Divorce

Either spouse may be required to pay support during or after marriage depending on conduct and financial circumstances. South Africa has reciprocal agreements with other countries regarding the recognition of maintenance agreements.¹⁹⁹ The court may order spouse most responsible for divorce to forfeit benefits of marriage in community property.²⁰⁰ The court considers welfare of children in matter of custody and has the power to order either or both spouses to contribute to the maintenance of the children after dissolution of marriage.

Trusts

Trusts are authorized under South African law. The Trust Property Control Act (No. 57 of 1988) regulates administration of trusts and prescribes certain formalities in respect of trusts.²⁰¹

CC. SPAIN

Marriage

Marriage may take place before a judge, a religious official or before a diplomatic officer when the marriage is contracted abroad. A religious marriage must be recorded at the Civil Registry in order to be effective. Same-sex marriage was legalized in 2005 (Law 13/2005 amending the Civil Code). The law allows a Spanish citizen to marry a non-Spaniard regardless of whether that person's homeland recognizes the partnership. At least one partner must be a Spanish citizen to marry, although two non-Spaniards may marry if they both have legal residence in Spain.

Antenuptial and postnuptial agreements are recognized.²⁰² In the absence of an agreement, the marital property is governed by community property principles. Private property is the property owned before marriage or acquired by gift or inheritance. Community property is property acquired after marriage and includes income from private and community property.

Death of spouse

In an intestacy, the surviving spouse inherits the full estate only if there are no

¹⁹⁸ SOUTH AFRICA LAW DIGEST § 12.04.

¹⁹⁹ SOUTH AFRICA LAW DIGEST §12.07.

²⁰⁰ SOUTH AFRICA LAW DIGEST § 13.04.

²⁰¹ SOUTH AFRICA LAW DIGEST § 12.07.

²⁰² SPAIN LAW DIGEST § 14.04 (Martindale-Hubbell European Law Digests, 2010).

living descendants or ascendants of the decedent.²⁰³

By law, the surviving spouse is entitled to one-half of the community property plus: (1) if the decedent leaves issue, a usufruct of one-third of the estate; (2) if the decedent leaves no issue but ascendants, a usufruct of one-half of the estate; (3) if the decedent leaves no issue and no ascendants, a usufruct of two-thirds of the estate.

Divorce

All consensual petitions for divorce must be accompanied by a proposal for property division, custody of children, use of family home and alimony. The courts determine alimony based on age, health, professional qualification, personal wealth and duration of marriage. If there is no agreement to the contrary, property is divided under the community property system.

Spanish courts may hear divorce cases when both spouses are Spanish citizens or residents, if the plaintiff is a Spanish citizen and resident or if the defendant is a resident of Spain.²⁰⁴

DD. SWEDEN

Marriage

According to the Marriage Code of 1987 proposed spouses must apply to the civil registry for investigation of obstacles to marriage and must declare that no such obstacles exist. The wedding must be performed by ministers, judges, or other licensed persons. Both parties must be at least 18 years of age unless the Provincial Government grants permission to marry at a younger age.

Spouses remain owners of their property and earnings but acquire an undivided half interest in each other's property. Neither spouse may dispose of or mortgage real estate that is community property without the written consent of the other spouse. Property remains separate if declared separate by the marriage settlement or if acquired by gift or by inheritance on the condition of being the separate property of the recipient. The spouses may enter into a property agreement before or after the wedding. Any agreement must be registered with the court and in the National Marriage Settlement Register to be effective against third parties.²⁰⁵ Each spouse is responsible for his or her own debts, but spouses are jointly and severally liable for debts incurred jointly by them.

In April 2009 Sweden granted same-sex couples the right to marry.²⁰⁶ Homosexual couples may marry in a civil or religious ceremony, though

²⁰³ SPAIN LAW DIGEST § 13.03.

²⁰⁴ SPAIN LAW DIGEST § 14.02.

²⁰⁵ SWEDEN LAW DIGEST § 13.01 (Martindale-Hubbell European Law Digests, 2010).

²⁰⁶ *Sweden Allows Same-Sex Couples to Marry*, BBC NEWS, April 2, 2009, <http://news.bbc.co.uk/2/hi/7978495.stm>.

individual churches may opt out. Sweden was one of the first countries to provide for same-sex rights. The Cohabitees Act of 2003 subjects an unmarried couple (opposite or same-sex) living in a relationship as husband and wife (or analogous) to laws comparable to those that apply to married couples. If cohabitation is terminated, cohabitants are entitled to one-half of joint property, which includes only property acquired in view of cohabitation. Since 1994, same-sex couples may request registration of their partnership, provided that at least one of the partners is a Swedish citizen domiciled in Sweden. Generally, the same laws apply as to a married couple, except that partners may not adopt. A registered partnership is dissolved by death or by court decision.

Death of spouse

If the decedent dies intestate, the surviving spouse inherits the entire estate, except if the decedent leaves a direct heir who is not also a direct heir of the surviving spouse. Upon the surviving spouse's death, the residue goes to the direct heirs of both spouses.

If in his or her will the decedent with direct heirs gives away so much that the amount received by the direct heirs is less than one-half of that which they would receive if decedent had died intestate, the heirs may apply for alteration of the will.

Divorce

Each spouse is responsible for his or her own support, except during a transition period if there is special need.²⁰⁷

Cases of divorce between aliens may be tried in Sweden under Swedish law if the defendant is domiciled in Sweden or if plaintiff is domiciled in Sweden for at least one year.

Trusts

Trusts are not authorized under Swedish law.

EE. SWITZERLAND

Marriage²⁰⁸

The promise of marriage must be published at the Civil Status Offices of Swiss domiciles of each party. If both future spouses are domiciled abroad, the parties may go to the Civil Status Office in the domicile where they will be married. The

²⁰⁷ SWEDEN LAW DIGEST § 14.03.

²⁰⁸ SWITZERLAND LAW DIGEST § 14.07 (Martindale-Hubbell European Law Digests 14.07); Federal Constitution Art. 14; C.C. 90-136 (Switz.); Ordinance of Federal Government concerning Civil Status Matters [Civil Status Ordinance] of Apr. 28, 2004 (Switz.). Registered partnership: Civil Status Ordinance and Partnership Code (Switz.).

parties must document domicile, civil status, capacity to marry and the nonexistence of impediments to marriage. The promise will not be published if there is incapacity or impediments to marriage. Within a ten-day publication period, any interested person may file objections to the marriage on grounds of incapacity or impediments to marriage. The future spouses may contest objections within ten days. The objector(s) must then bring court action within ten days to prevent marriage.

Both males and females must be 18 years of age. A Civil Status Official presides over the ceremony, which is public and must be witnessed by two adults. Immediately after the ceremony a marriage license is given to the couple and their marriage is recorded in the Marriage Register at the place of the official who performed the celebration. A marriage of Swiss citizens must also be recorded in the Family Register. A religious ceremony may take place, but only after civil marriage.²⁰⁹

Aliens may marry in Switzerland if (1) one spouse has domicile in Switzerland and marriage is permitted under Swiss law or the law of either spouse's country of citizenship or (2) neither spouse has domicile in Switzerland but the marriage is recognized in both spouses' countries of domicile or citizenship.²¹⁰

There are three possible systems for owning property between spouses.²¹¹ (1) Sharing of Acquisitions: this is the statutory default regime and applies unless a marital property contract provides otherwise. Property earned during marriage is owned one-half each, and items solely for personal use as well as property owned before or inherited during marriage remain separately owned. Property is administered separately.²¹² Registered partners may enter into a contract detailing the terms in case of dissolution, and may choose to divide their property according to the rules about sharing of acquisitions.²¹³ (2) Community of Property: all property (except as modified by marital contract) brought into marriage and all income earned during marriage is jointly owned. Only items for personal use are separately owned. Property is administered jointly.²¹⁴ (3) Separation of property: each spouse retains and administers his or her own property.²¹⁵

Same-sex marriage is not recognized by law, but Swiss law provides the ability for same-sex couples to register under the Partnership Code of June 18, 2004, in force since January 2007. Registered partnership has similar legal effects as marriage.²¹⁶

²⁰⁹ C.C. 97, 101-103 (Switz.); Ordinance of Apr. 28, 2004, 70-72. Registered Partnership Ordinance of Apr. 28, 2004, 75-751 (Switz.).

²¹⁰ Art. 43, Private Int'l Law Statute [PILS 43] (Switz.).

²¹¹ SWITZERLAND LAW DIGEST § 14.05; C.C. 181-184 (Switz.).

²¹² C.C. 196-200 (Switz.); 1 SWITZERLAND LAW DIGEST § 14.05.

²¹³ SWITZERLAND LAW DIGEST § 14.05; Partnership Code 25, C.C. 196-219 (Switz.).

²¹⁴ SWITZERLAND LAW DIGEST § 14.05; C.C. 221-246 (Switz.).

²¹⁵ SWITZERLAND LAW DIGEST § 14.05.

²¹⁶ *Id.*

Death of spouse

If the decedent dies intestate leaving issue, the surviving spouse receives one-half of the estate. If the decedent leaves no issue but parents or parents' issue survive, the surviving spouse receives three-fourth of the estate. If decedent leaves neither, the spouse receives the entire estate.²¹⁷ The surviving spouse cannot be disinherited because he or she may compel payment of one-half of his or her intestate share of the decedent's estate.

Divorce

Swiss law applies if (1) both parties are domiciled in Switzerland, (2) if the defendant is domiciled in Switzerland or (3) the plaintiff has been domiciled for one year in Switzerland or is a Swiss citizen. If both spouses have a common foreign citizenship, that law applies unless divorce is impossible or highly impracticable under that law.²¹⁸ The same rules are generally applicable to registered partnerships.²¹⁹

The innocent party whose financial situation is jeopardized will receive support and in addition may also receive compensation for moral wrongs. If an innocent spouse would become destitute after divorce, the other spouse (even if also innocent) may have to pay alimony within the limits of his or her financial abilities.²²⁰ In the case of dissolution of registered partnerships, each party has to earn its own living and alimony may be allocated (but usually more restrictively than in the case of divorce).²²¹

The division of property depends on the system the spouses choose for owning property. There are three possible regimes: (1) Sharing of Acquisitions: upon divorce, personal use items and property owned before or inherited during marriage are retained by the respective spouses, and each spouse retains one-half of all earned property. (2) Community of Property: each spouse receives items solely for his or her personal use as well as property owned before or inherited after marriage, and the remaining property is split in half. (3) Separation of Property: each spouse retains his or her own property.

Trusts

Since July 1, 2007, trusts are recognized by the Swiss legal system.²²² Swiss law also recognizes transferring ownership to a fiduciary.²²³

²¹⁷ SWITZERLAND LAW DIGEST § 13.05; C.C. 462 (Switz.).

²¹⁸ SWITZERLAND LAW DIGEST § 14.03.

²¹⁹ SWITZERLAND LAW DIGEST § 14.03; PILS 65a-65d (Switz.).

²²⁰ See C.C. 125-132 (Switz.); SWITZERLAND LAW DIGEST § 14.03.

²²¹ SWITZERLAND LAW DIGEST § 14.03; see Partnership Code 34, C.C. 125 Sec. 3, 126-132 (Switz.).

²²² SWITZERLAND LAW DIGEST § 13.08.

²²³ SWITZERLAND LAW DIGEST § 13.07.

FF. THAILAND

Marriage

Marriage is effective only upon registration in person at any district office. Males and females must be at least 17 years of age.²²⁴ If the parties are under age 20, parental consent is required. Giving consent to marriage may be made verbally before two witnesses or in writing. Once consent has been given, it cannot be revoked. Foreign marriages between the Thai and foreigners are recognized (1) if they are performed according to Thai law at an embassy or consulate or (2) if done according to the law of the country where marriage takes place.²²⁵ Same-sex partners are not recognized by law.

Antenuptial agreements are enforceable if they are recorded in the Marriage Register at the time of marriage registration.²²⁶ If they are made at a later time, they must be attached to the Marriage Register, which mentions its attachment. Any clause contrary to public order or morality or providing that foreign law should govern the property is void.²²⁷ Property acquired after marriage is community property. The following are not community property: (1) property acquired before marriage, (2) property for personal use, (3) gift or inheritance acquired after marriage and (4) property given by husband to wife as evidence of betrothal.²²⁸ Community property belongs to both spouses equally. One spouse can only sell, mortgage, encumber, lend, gift, etc. community property with the consent of the other one. Debts incurred before or during marriage for which one spouse is responsible must be paid out of personal property not included in community property.²²⁹ If spouse does not own enough personal property, the debt is to be paid out of the debtor spouse's share of community property.

Death of spouse

The statutory heirship of the surviving spouse is determined as follows: (1) if the decedent leaves issue, the spouse inherits the same share as each child; (2) if the decedent leaves parents or full-blood siblings, the spouse inherits one-half of the estate; (3) if the decedent leaves half-blood siblings or aunts or uncles, the spouse inherits two-thirds of the estate and (4) if none of the above survive, the spouse inherits the entire estate.²³⁰

Divorce

Divorce may occur by mutual consent in a signed, witnessed writing.²³¹ Divorce between aliens in Thailand is possible only if the laws of the nationalities of the

²²⁴ THAILAND LAW DIGEST § 13.05 (Martindale-Hubbell Asian Law Digests, 2010); C.C.C. 1457, 1458 (Thai.).

²²⁵ THAILAND LAW DIGEST § 13.05 C.C.C. 1459 (Thai.).

²²⁶ THAILAND LAW DIGEST § 13.05 C.C.C. 1466 (Thai.).

²²⁷ THAILAND LAW DIGEST § 13.04-13.05; C.C.C. 1465 (Thai.).

²²⁸ *Id.* C.C.C. 1470, 1471 (Thai.).

²²⁹ THAILAND LAW DIGEST § 13.03; C.C.C. 1489, 1490 (Thai.).

²³⁰ THAILAND LAW DIGEST § 12.03; C.C. 1635 (Thai.).

²³¹ THAILAND LAW DIGEST § 13.02; C.C.C. 1514, 1515 (Thai.); C.O.L. 26-27 (Thai.).

spouses permit. The grounds for divorce are those provided by Thai law.

Support is only given if the supporting spouse is solely responsible for the ground for divorce and divorce results in the other spouse's insufficient income. If one spouse intentionally creates ground for divorce (e.g. cruelty, gross insult, desertion, failure to properly support) in order to obtain a divorce, the other spouse is entitled to compensation.

Trusts

Trusts are not permitted under Thai law.²³²

GG. TURKEY

Marriage²³³

The minimum age to marry is 15 years for females and 17 years for males (or in exceptional cases males may marry at 16 if allowed by the court).²³⁴ Parental consent is required for minors to marry. A license must be obtained and cannot be given before publication of banns (unless a court order grants otherwise). The ceremony may only be performed by municipal authorities in order to have legal effect. No religious ceremony can take place unless a certificate of marriage is received from the officer of civil status.²³⁵ A marriage contract must be signed by both parties. Common law marriages are not recognized. Same-sex partners are not recognized by law.

Prenuptial contracts are very uncommon in Turkey, however, parties must adopt one of the following three regimes via contract immediately prior to or immediately following marriage:²³⁶ (1) Separation of property: if no regime is adopted in marriage contract, parties are assumed to adopt separation of property during which husband and wife have separate ownership of property and both can manage their own property;²³⁷ (2) Combination of property: all property possessed by spouses at marriage and all property acquired during marriage is joint property, whereas property acquired by gift is combined property (unless the donor expresses contrary intent) which remains separate, but the husband administers it and is entitled to the income;²³⁸ (3) Community of property: all property is owned and administered jointly by the spouses and is subject to the debts of both.²³⁹

²³² THAILAND LAW DIGEST § 12.05.

²³³ TURKEY LAW DIGEST § 14.08 (Martindale-Hubbell European Law Digests, 2010).

²³⁴ TURKEY LAW DIGEST § 14.08.

²³⁵ *Id.*

²³⁶ TURKEY LAW DIGEST § 14.06.

²³⁷ *Id.*

²³⁸ *Id.* See C.C. 202, 218 (Turkey).

²³⁹ TURKEY LAW DIGEST § 14.06.

Death of spouse

If the decedent died intestate and left issue, the surviving spouse inherits one-fourth of the estate. If he or she left parents or descendants of parents, the surviving spouse inherits one-half of the estate. If the decedent left grandparents or descendants of grandparents, the surviving spouse inherits three-fourths of the estate. If none of the aforementioned heirs survive, the surviving spouse inherits the entire estate.²⁴⁰ If community of property as a regime is selected, one-half of the community property is given to the spouse and one-half to the decedent's heirs, including the surviving spouse (e.g. if the decedent left issue the surviving spouse inherits an additional share of one-fourth).

By statute the surviving spouse is entitled to the equivalent of the entire intestate share if the decedent left issue, and to one-half intestate share if the decedent left other heirs. An heir may be deprived of inheritance rights if guilty of great wrong against the testator or one of his or her near relatives.²⁴¹

Divorce

If an innocent spouse becomes impoverished due to the divorce, the other party (even if also not guilty) may be ordered to pay alimony for a period of not more than one year. If one of the parties is guilty, he or she may be forbidden to remarry for between one and two years. A woman cannot remarry after a divorce for 300 days, unless the period is shortened by court order.²⁴²

Aliens residing in Turkey may sue for separation or for divorce. If both parties have the same nationality, the laws of that jurisdiction apply, so long as the laws are not antithetical to the public morals and order of Turkey. If the parties do not have a common nationality, the laws of Turkey apply.²⁴³

HH. THE UKRAINE

Marriage

Before marriage, the parties must submit an application to the state registration agency with proof of identification. The state registration agency then appoints date and time of marriage registration, which is at the earliest one month after the date of application unless an exception applies. No medical examinations are required. The parties' minimum age is 17 years for women and 18 years for men.²⁴⁴ Same-sex partners are not recognized by law.

The state registration agency is permitted to draft a marriage contract, which

²⁴⁰ TURKEY LAW DIGEST § 13.03; *see* C.C. 499 (Turkey).

²⁴¹ TURKEY LAW DIGEST § 13.04.

²⁴² TURKEY LAW DIGEST § 14.04.

²⁴³ TURKEY LAW DIGEST § 14.04.

²⁴⁴ UKRAINE LAW DIGEST § 13.04 (Martindale-Hubbell European Law Digests, 2009).

specifies property and non-property rights of spouses and the procedure for division of property upon divorce. Property obtained by the parties during their marriage is joint property in which each spouse has equal rights.²⁴⁵ In addition to joint property, each spouse may own personal property. A spouse may require division of property obtained during marriage or within three years after divorce.

Death of spouse

If the decedent dies intestate, the children, spouse and parents inherit in equal parts.

The statutory share equals two-thirds of each intestate share. The surviving spouse is not entitled to the statutory share unless he or she is disabled and was supported by the testator for more than one year. To be considered disabled, the surviving spouse must be elderly (women must be age 55 or older; men must be age 60 or older) or an invalid.

Divorce

The husband may not commence a divorce action while the wife is pregnant and for one year after the child's birth. State registration agencies may grant divorce in cases of mutual consent when there are no minor children or when one party is recognized as absentee (e.g. incompetent, incarcerated for at least three years or missing).

The parent without custody of minor children must pay support in an amount which is determined based on the state of health and the material state of the child and alimony payer and other essential circumstances. A spouse may be obligated by the court to pay support to the other spouse. Divorce of Ukrainian citizens from foreigners and between foreign citizens is conducted under Ukrainian law.

II. ISLAMIC LAW

Regardless of their citizenship, observant Muslims must follow the estate plan dictated by the Quran. Countries with large Muslim populations (Middle Eastern countries as well as India, Malaysia, Pakistan, etc.) provide for this specifically in their legal codes.

Marriage

The marriage offer and acceptance must be made at the same meeting in the presence and hearing of two male witnesses or one male and two female witnesses who are adult Muslims. A religious ceremony and writing are not essential, but it is customary for the parties to appear before a priest and record their consent in writing.²⁴⁶ Three copies are usually made, two of which are given

²⁴⁵ *Id.*

²⁴⁶ *See, e.g.*, SINGAPORE LAW DIGEST § 12.05; MALAYSIA LAW DIGEST § 12.04 (Muslim Marriages).

to the bride and groom and one of which is kept by the priest or recording officer. Every Muslim of sound mind who has attained puberty may enter into a marriage contract. A Muslim male may have up to four wives at once.²⁴⁷ Further marriages are not void but are irregular. An irregular marriage is terminable at will by either party. Before consummation, an irregular marriage has no legal effect; after consummation however, the wife becomes entitled to dower and any issue become legitimate. An irregular marriage creates no inheritance rights between spouses.

Death of spouse

The law of Islamic inheritance dictates the shares distributable to heirs, regardless of a will.²⁴⁸ If the decedent is the husband and he leaves no issue and no parent, the widow inherits one-fourth of the estate. If he leaves issue and no parent, the widow inherits one-eighth of the estate. If he leaves no issue and parent, the widow inherits one-fourth of the estate. If the decedent is the wife and she leaves no issue and no parent, the widower inherits one-half of her estate. If she leaves issue and no parent, the widower inherits one-half of her estate. If she leaves no issue and no parent, the widower inherits one-half of her estate.

By law a Muslim may not dispose of more than one-third of his estate after payment of debts and funeral expenses.²⁴⁹ A bequest in excess of the legal one-third cannot take effect unless all heirs consent after the testator's death.²⁵⁰ No testator can make a bequest regarding any Quranic heir.²⁵¹ The testator cannot increase or decrease the portion fixed in the Quran.²⁵²

²⁴⁷ See *e.g.*, INDIA LAW DIGEST § 13.06.

²⁴⁸ See, *e.g.*, SINGAPORE LAW DIGEST § 11.03 (Law of Islamic Inheritance); MALAYSIA LAW DIGEST § 11.03.

²⁴⁹ See SINGAPORE LAW DIGEST § 11.06 (Wills Made by Muslims); MALAYSIA LAW DIGEST § 11.06 (Wills Made by Muslims).

²⁵⁰ See, *e.g.*, SINGAPORE LAW DIGEST § 11.06 (Wills Made by Muslims).

²⁵¹ See, *e.g.*, *id.*

²⁵² See, *e.g.*, *id.*

III. Summary of Marriage and Divorce Statistics²⁵³

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
ALBANIA (2001)	Males 15+	318032	729184	3236	
	Females 15+	243405	749014	8194	
AMERICAN SAMOA (1995)	Males 15+	2,959	4,332	192	
	Females 15+	2,532	4,300	286	
ANGOLA (1970)	Males 15+	508,200	949,900	4,700	
	Females 15+	256,900	1,036,300	13,200	
ANGUILLA (2001)	Males	3,726	1,577	218	
	Females	3,723	1,535	279	
ANTIGUA AND BARBUDA (1991)	Males 15+	11,882	6,233	720	
	Females 15+	13,228	6,053	782	
ARGENTINA (1991)	Males 15+	3,541,711	5,858,157	335,515	
	Females 15+	3,048,438	5,552,600	550,096	
ARMENIA (2001)	Males 15+	34,8373	73,9737	199,79	
	Females 15+	294,652	771,568	52,505	
ARUBA (1991)	Males 15+	9,330	12,755	1,741	
	Females 15+	9,292	12,368	2,436	

²⁵³ The statistics were originally adapted from a chart by the U.S. Bureau of the Census, International. However, this chart was removed in 2008, *see* U.S. CENSUS BUREAU, INTERNATIONAL DATA BASE: RELEASE NOTES DECEMBER 2008, http://www.census.gov/population/international/data/idb/rel_notes.php?rel=2008-12. The more recent statistics are adapted from the United Nations Statistics Division, *see* UNITED NATIONS STATISTICS DIVISION DATA BASE, DEMOGRAPHIC YEARBOOK SPECIAL CENSUS TOPICS: POPULATION BY MARITAL STATUS, AGE, SEX, URBAN/RURAL RESIDENCE, EACH CENSUS, 1985-2004 (TABLE 2), released June 30, 2006, *available at* <http://unstats.un.org/unsd/demographic/products/dyb/dybcens.htm>.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
AUSTRALIA ²⁵⁴ (2001)	Males 15+	2,596,383	3,850,249	717,654	Yes ²⁵⁵
	Females 15+	2,189,376	3,855,659	901,879	
AUSTRIA (2001) ²⁵⁶	Males 15+	966,632	1,630,914	293,821	Yes
	Females 15+	800,392	1,630,914	359,572	
BARBADOS (1990)	Males 15+	53,016	27,189	2,989	
	Females 15+	57,328	27,792	4,137	
BELARUS (1989)	Males 16+	683,510	2,567,193	136,172	
	Females 16+	591,812	2,582,806	265,030	
BELGIUM (1995) ²⁵⁷	Males 15+	1,184,302	2,490,509	206,537	Yes ²⁵⁸
	Females 15+	941,863	2,495,797	241,873	
BERMUDA (2000)	Males 15+	8,599	12,550	180	
	Females 15+	8,488	12,244	3,369	
BRAZIL (2000)	Males 15+	19,485,108	24,155,779	1,314,688	Yes
	Females 15+	15,980,967	24,151,701	2,509,527	

²⁵⁴ In 2007, there were 116,322 marriages and 47,963,900 divorces in Australia. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11, *Australia Social Statistics*.

²⁵⁵ See Jeremy Morley, *International Family Law: International Prenuptial Agreements*, <http://www.international-divorce.com/prenuptial-agreements.htm>; see also, Gabriel Cheong, Infinity Law Group LLC, *Massachusetts Prenuptial Agreements: Prenuptial Agreements Around the World*, <http://www.massachusetts-prenuptial-agreements.com/prenuptial-agreement/prenuptial-agreements-around-the-world/>.

²⁵⁶ In 2008, there were 35,223 marriages and 19,701 divorces in Austria. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁵⁷ In 2005, there were 43,141 marriages and 30,840 divorces in Belgium. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁵⁸ See Morely, *International Family Law: International Prenuptial Agreements*.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
BULGARIA (2000)	Males 15+	844,133	1,971,562	153,461	
	Females 15+	427,159	2,493,997	148,984	
CANADA (2001)	Males 15+	3571840	6,008,450	790,260	Yes
	Females 15+	3,022,960	6,003,225	1,122,680	
CAYMAN ISLANDS (1989)	Males 15+	3,550	5,263	538	
	Females 15+	3,617	5,100	801	
CHILE (1992)	Males 14+	1,755,848	2,438,115	132,167	
	Females 14+	1,618,037	2,461,605	223,415	
CHINA (1995)²⁵⁹	Males 15+	1,074,720	3,262,386	43,215	Yes
	Females 15+	737,189	3,372,218	20,728	
COSTA RICA	<i>No</i>	<i>Statistics</i>			Yes
CUBA (1981)	Males 14+	1,233,033	1,309,936	215,340	
	Females 14+	767,889	1,339,308	411,271	
CYPRUS (2001)	Males	76,740	175,010	4,408	
	Females 15+	64,655	178,398	9,727	
DENMARK (1991)²⁶⁰	Males 15+	1,244,000	1,065,000	151,600	
	Females 15+	1,063,300	1,068,100	191,400	
DOMINICA (2001)	Males 15+	15,415	7,604	333	

²⁵⁹ In 2006, there 9,450,000 marriages and 1,893,000 divorces in China. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁶⁰ In 2007, there were 36,576 marriages and 14,066 divorces in Denmark. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
	Females 15+	14,223	7,474	403	
ECUADOR (2001)	Males 12+	1,817,592	1,570,138	122,054	
	Females 12+	1,588,644	1,628,067	256,792	
EQUATORIAL GUINEA (1983)	Male 15+	28,991	38,549	2,978	
	Female 15+	20,495	47,002	2,808	
ESTONIA (2000)	Males 15+	128,194125,2 23	223,792	56,272	
	Females 15+	131,272108,1 59	223,792	93,179	
FIJI (1986)	Males	219,609	136,530	2,588	
	Females	191,908	139,310	5,153	
FINLAND (2000)	Males 15+	813,974	992,100	193,421	Yes ²⁶¹
	Females 15+	687,662	994,582	247,528	
FRANCE (1999)	Males 15+	8,891,884	12,304,096	1,260,314	Yes
	Females 15+	7,823,165	12,196,409	1,743,101	
FRENCH GUIANA (1990)	Males 15+	28,476	10,704	778	
	Females 15+	24,266	9,745	921	
GAZA STRIP (1997)	Males 15+	3,674	5,711	38	
	Females 15+	2,519	5,865	186	
GEORGIA (1989)	Males 16+	456,229	1,284,186	27,613	

²⁶¹ See Morely, *International Family Law: International Prenuptial Agreements*.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
	Females 16+	373,331	1,304,906	88,269	
GERMANY (2001) ²⁶²	Males 15+	10,425,670	19,982,000	1,726,000	Yes
	Females 15+	8,237,400	20,040,300	2,464,200	
GREECE (2001)	Male 15+	1,558,861	2,741,232	129,169	Yes ²⁶³
	Female 15+	1,114,756	2,715,537	235,309	
GREENLAND (1988)	Males	13,443	7,507	1,249	
	Females	9,339	6,932	745	
GRENADA (1991)	Males 15+	16,859	7,054	595	
	Females 15+	17,149	7,035	617	
GUADELOUPE (1990)	Males 15+	82,213	51,903	3,640	
	Females 15+	81,569	51,946	5,841	
GUYANA (1991)	Males 15+	124,916	91,720	5,730	
	Females 15+	117,202	95,227	7,710	
HONDURAS (1996)	Males 12+	604,824	320,806	14,127	
	Females 15+	2,071	1,861	961	
HONG KONG (1996)	Males 15+	858,341	1,557,211	40,964	No
	Females 15+	737,926	1,515,574	56,298	
HUNGARY (1990)	Males 20+	156,901	2,366,733	184,976	

²⁶² In 2007, there were 368,922 marriages and 187,072 divorces in Germany. Of the marriages, in 2007, 25,907 were between German females and foreign males and 32,232 were between German males and foreign females. *See STATESMAN'S YEARBOOK ONLINE*, *supra* note 11.

²⁶³ *See Morely, International Family Law: International Prenuptial Agreements.*

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
	Females 20+	111,484	129,619	245,995	
ICELAND (1991) ²⁶⁴	Male 15+	74,100	46,900	5,100	
	Female 15+	66,200	47,100	5,900	
IRELAND (1996)	Males	1,052,575	674,955	35,661	No
	Females	944,707	681,658	52,131	
ISRAEL (1987)	Males 15+	465,400	992,200	N/A	Yes
	Females 15+	355,300	1,150,700	N/A	
ITALY (2001)	Males 15+	7,907,892	----	655,664	Yes
	Females 15+	6,650,974	-----	874,879	
JAPAN (2000)	Males 15+	16,679,779	32,448,465	1,417,508	Yes
	Females 15+	13,200,879	32,435,405	2,427,759	
KOREA (2000)	Males 15+	6,316,890	11,010,349	324,191	Yes
	Females 15+	4,617,137	11,013,456	380,525	
KUWAIT (1985)	Males 15+	199,033	443,145	2,222	
	Females 15+	120,282	273,491	6,892	
KYRGYZSTAN (1989)	Males 16+	312,882	848,898	36,959	
	Females 16+	220,681	854,665	79,570	
LATVIA (1989)	Males 16+	199,299	630,377	68,056	
	Females 16+	173,493	632,916	120,734	

²⁶⁴ In 2007, there were 1,708 marriages (13 same sex) and 515 divorces in Iceland. *See* STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
LIBYA (1984)	Males 15+	370,944	446,881	6,871	
	Females 15+	252,356	440,708	22,054	
LITHUANIA (1989)	Males 16+	296,675	895,214	57,367	
	Females 16+	258,564	899,475	100,499	
LUXEMBOURG (2001) ²⁶⁵	Males 15+	56,251	103,067	9,996	Yes ²⁶⁶
	Females 15+	45,808	100,185	12,223	
MACAU (1996)	Males 15+	41,074	99,094	1,410	
	Females 15+	44,514	103,573	2,444	
MADAGASCAR (1993)	Males 10+	2,016	1,921	100	
	Females 10+	1,735	1,945	279	
MALAYSIA (2000)	Males 10+	4,378,980	4,601,307	31,516	No
	Females 10+	3,606,332	4,624,523	94,004	
MARTINIQUE (1999)	Males 15+	79,999	50,591	50,048	
	Females 15+	88,181	51,374	8,140	
MEXICO (2000) ²⁶⁷	Males 12+	13,239,762	15,170,879	677,715	No
	Females 12+	12,426,162	15,637,496	1,808,764	
MICRONESIA (1994)	Males +15	12,403	16,362	763	
	Females +15	10,201	15,802	1,265	

²⁶⁵ In 2004, there were 1,999 marriages and 1,055 divorces in Luxembourg. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁶⁶ See Morely, *International Family Law: International Prenuptial Agreements*.

²⁶⁷ In 2005, there were 595,713 marriages and 70,184 divorces in Mexico. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
NETHERLANDS ²⁶⁸ (2002)	Males 15+	2,337,763	3,536,551	398,550	Yes
	Females 15+	1,903,066	3,527,431	519,800	
NETHERLANDS ANTILLES (2001)	Males 15+	28,139	27,010	3,638	
	Females 15+	33,297	26,689	5,988	
NEW ZEALAND (2001)	Males 15+	460,122	6,649,908	128,080	Yes
	Females 15+	423,552	673,665	165,714	
NORWAY (2001) ²⁶⁹	Males 15+	554,828	850,080	117,808	Yes
	Females 15+	421,247	845,867	150,088	
PANAMA (2000)	Males 15+	358,969	254,043	60,125	
	Females 15+	247,070	255,808	116,151	
PARAGUAY (2002)	Males 10+	1,001,909	632,480	28,481	
	Females 10+	883,458	643,738	48,361	
PERU	<i>No</i>	<i>Statistics</i>			No
POLAND (2002)	Males 15+	4,862,997	8,823,388	528,163	
	Females 15+	3,869,030	8,880,382	811,022	
PORTUGAL (2001) ²⁷⁰	Males 15+	1,172,480	2,571,823	98,354	Yes ²⁷¹
	Females 15+	1,051,453	2,567,769	176,665	

²⁶⁸ In 2007, there were 72,485 marriages and 31,983 divorces in The Netherlands. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁶⁹ In 2008, there were 25,125 marriages and 10,158 divorces in Norway. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁷⁰ In 2006, there were 47,857 marriages and 22,881 dissolutions of marriage in Portugal. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁷¹ See Morely, *International Family Law: International Prenuptial Agreements*.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
PUERTO RICO (2000)	Males 15+	433,769	-----	141,550	
	Females 15+	380,015	-----	241,469	
ROMANIA (2002)	Males 15+	2,756,423	5,175,144	318,671	
	Females 15+	2,020,483	5,208,909	491,452	
RUSSIA (2002)	Males 16+	13,601,996	30,594,002	4,089,417	Yes
	Females 16+	11,320,796	30,675,656	7,096,564	
SAMOA (1981)	Males	57,915	21,792	687	
	Females	47,546	22,864	1,823	
SINGAPORE (2000)	Males 15+	413,343	770,956	-----	No
	Females 15+	347,010	772,291	-----	
SLOVENIA (2002)	Males 15+	440,487	435,002	22,362	
	Females 15+	372,309	449,503	36,882	
SOUTH AFRICA (1991)	Males 15+	4,554,234	4,564,534	181,728	Yes
	Females 15+	3,988,850	4,213,021	343,203	
SOUTH KOREA (1995)	Males 15+	6,107,620	10,408,149	169,015	
	Females 15+	4,454,047	10,417,047	197,498	
SPAIN (1991)	Males 15+	9,206,400	9,327,600	59,300	Yes
	Females 15+	8,356,100	9,428,400	97,000	
SWEDEN (2003)	Males 15+	1,611,299	1,544,702	364,116	Yes
	Females 15+	1,323,941	1,550,010	461,610	

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
SWITZERLAND (2000) ²⁷²	Males 15+	980,476	1,711,198	167,954	Yes
	Females 15+	839,598	1,689,198	239,981	
TAIWAN (1997)	Males 15+	3,284,982	4,846,579	286,154	Yes ²⁷³
	Females 15+	2,464,217	4,801,104	296,013	
THAILAND (2000)	Males 15+	8,019,099	13,977,400	327,330	Yes ²⁷⁴
	Females 15+	6,928,362	14,735,050	610,790	
TRINIDAD AND TOBAGO (1990)	Males 15+	160,973	160,440	9,264	
	Females 15+	139,629	163,256	12,679	
TURKEY (2000)	Males 15+	7,859,829	1,548,688	203,755	Yes
UKRAINE (2001)	Males 16+	4,433,406	10,959,186	1,239,882	Yes
	Females 16+	3,550,009	11,067,012	2,289,233	
UNITED KINGDOM (2001) ²⁷⁵	Males 16+	7,625,206	11,952,492	2,094,236	Yes ²⁷⁶
	Females 16+	11,900,636	6,561,782	2,848,272	
UNITED STATES (2010) ²⁷⁷	Males 15+	40,224,000	62,191,000	12,338,000	Yes
	Females 15+	340,070,000	62,028,000	16,961,000	

²⁷² In 2008, there were 41,534 marriages and 19,613 divorces in Switzerland. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁷³ See Morely, *International Family Law: International Prenuptial Agreements*.

²⁷⁴ See Morely, *International Family Law: International Prenuptial Agreements*.

²⁷⁵ In 2007, there were 273,923 marriages and 143,955 divorces in the U.K. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11.

²⁷⁶ Radmacher v. Granatino, [2010] U.K.S.C. 42 (Eng.) (Supreme Court of England upheld Radmacher's prenuptial agreement against former husband Granatino).

²⁷⁷ In 2007, there were 2,197,000 marriages and divorces in the U.S. See STATESMAN'S YEARBOOK ONLINE, *supra* note 11. See also, 2010 U.S. CENSUS BUREAU STATISTICS.

COUNTRY		SINGLE	MARRIED	SEPARATED OR DIVORCED	PRENUPS VALID
URUGUAY (1985)	Males	734,297	570,296	39,865	
	Females	661,554	571,869	67,444	
VENEZUELA (2001)	Males 15+	2,987,181	2,276,767	312,285	
	Females 15+	2,555,292	2,309,712	718,931	
VIETNAM (1989)	Males 13+	7,463,771	11,892,890	120,332	
	Females 13+	6,981,058	12,487,489	379,096	
VIRGIN ISLANDS (1995)	Males 15+	14,585	17,381	2,914	
	Females 15+	16,870	17,283	5,843	
WEST BANK (1997)	Males 15+	9,205	11,298	62	
	Females 15+	6,802	11,635	305	

IV. Checklist for Impact of Matrimonial Laws Upon International Estate Planning

A. Creation of Marriages

1. What formalities are required?
 - a. Witnesses?
 - b. By whom performed?
 - c. Health status of the parties?
 - d. Counseling requirements?
 - e. Degree of contact with the jurisdiction by the parties?
 - f. Possibility of common law marriage without formalities?
 - g. Other?
2. Under what circumstances will foreign civil marriages be recognized?
3. Under what circumstances will foreign religious marriages be recognized?
4. What are the legal benefits of marriage?
 - a. Heterosexual couples
 - b. Tax?
 - c. Health care?
 - d. Retirement?
 - e. Social?
 - f. Other?
 - g. Same sex couples
5. What are the obligations of marriage?
 - a. Support?
 - b. Liability for debts?
 - c. Other?
6. What is the legal status of same sex couples?
7. What is the legal status of unmarried, heterosexual couples?
8. What is the effect of marriage on a will?

B. Dissolution of Marriages Where No Marital Agreements Have Been Executed

1. Upon Death

- a. What entitlements to support does the surviving spouse have?
- b. Do these support entitlements extend to foreigners who
 - i. Own property within the jurisdiction?
 - ii. Have a residence in the jurisdiction?
 - iii. Neither own property or have a residence in the jurisdiction but are subject to in personam jurisdiction
- c. What entitlements to property division does the surviving spouse have?
- d. Do these property entitlements extend to foreigners who
 - i. Own property within the jurisdiction?
 - ii. Have a residence in the jurisdiction?
 - iii. Neither own property or have a residence in the jurisdiction but are subject to in personam jurisdiction

2. Upon Divorce

- a. What formalities are required?
 - i. Attorneys?
 - ii. Counseling?
 - iii. Degree of contact with the jurisdiction by the parties?
 - iv. Others?
- b. What entitlements to support does the surviving spouse have?
- c. Do these support entitlements extend to foreigners who
 - i. Own property within the jurisdiction?
 - ii. Have a residence in the jurisdiction?
 - iii. Neither own property or have a residence in the jurisdiction but are subject to in personam jurisdiction

- d. What entitlements to property division does the surviving spouse have?
- e. Do these entitlements extend to foreigners who
 - i. Own property within the jurisdiction?
 - ii. Have a residence in the jurisdiction?
 - iii. Neither own property or have a residence in the jurisdiction but are subject to in personam jurisdiction
- f. Under what circumstances will foreign divorces be recognized?
- g. Will the terms of foreign property settlements be enforced against property within the jurisdiction?
- h. Under what circumstances will religious divorces be recognized?
- i. What is the effect of divorce on wills?
- j. Are any rights accorded to non-married couples who break up?

C. Dissolution of Marriages Where Marital Agreements Have Been Executed

- 1. Prenuptial and Cohabitation Agreements
 - a. What formalities are required?
 - i. Separate representation?
 - ii. Asset and income disclosure?
 - iii. Witnesses?
 - iv. Other?
 - b. Are premarital agreements valid as to
 - i. Support settlements?
 - ii. Property settlements?
 - iii. Child obligations?
 - iv. Testamentary obligations?
 - v. Other?

- c. What are the standards for enforceability of premarital agreements?
 - i. For married couples?
 - ii. For unmarried couples?
- d. What is the frequency of usage of premarital agreements?
- e. What is the legal status of cohabitation agreements made by unmarried couples?
- f. What is the frequency of usage of cohabitation agreements?
- g. Will a jurisdiction that does not enforce domestic prenuptial and cohabitation agreements enforce foreign prenuptial and cohabitation agreements?

2. Postnuptial Agreements

- a. What formalities are required?
 - i. Separate representation?
 - ii. Asset and income disclosure?
 - iii. Witnesses?
 - iv. Other?
- b. Are postnuptial agreements valid as to
 - i. Support settlements?
 - ii. Property settlements?
 - iii. Child obligations?
 - iv. Testamentary obligations?
 - v. Other?
- c. What are the standards for enforceability of postnuptial agreements?
 - i. For married couples?
 - ii. For unmarried couples?
- d. Will a jurisdiction that does not enforce domestic postnuptial and cohabitation agreements enforce foreign postnuptial and cohabitation agreements?

D. Child Custody Issues upon Dissolution of Marriage

1. Rights of Parents

- a. Are means of redress available if one parent takes the child to another jurisdiction before custody is decided by a court?
- b. Is parental kidnapping treated as a crime?

V. Legal Summaries of States of United States

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
Alabama	NO <i>Constitutional</i> ALA. CONST. art. I, § 36.03 (2013). <i>Statutory</i> ALA. CODE § 30-1-19 (2013).	YES <i>Constitutional</i> ALA. CONST. art. I, § 36.03 (2011). <i>Statutory</i> ALA. CODE § 30-1-19 (2011).	Prohibited <i>Constitutional</i> ALA. CONST. art. I, § 36.03 (2011).	Prohibited <i>Constitutional</i> ALA. CONST. art. I, § 36.03 (2011).	None pending.
Alaska	NO	YES <i>Constitutional</i>	No applicable statute or	No applicable statute or	None pending.

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	<i>Constitutional</i> ALASKA CONST. art. I, § 25 (2013). <i>Statutory</i> ALASKA STAT. § 25.05.011 (2013). ALASKA STAT. § 25.05.013 (2013).	ALASKA CONST art. I, § 25 (2011). <i>Statutory</i> ALASKA STAT. § 25.05.013 (2013).	amendment.	amendment.	
Arizona	NO <i>Statutory</i> ARIZ. REV. STAT. § 25-101 (2013). ARIZ. REV. STAT. § 25-901 (2013) (addressing covenant marriages).	YES <i>Constitutional</i> ARIZ. CONST. art. XXX, § 1 (2011). <i>Statute</i> ARIZ. REV. STAT. § 25-112 (2013).	Prohibited <i>Constitutional</i> ARIZ. CONST. art. XXX, § 1 (2011)	No applicable statute or amendment.	None pending.
Arkansas	NO <i>Statutory</i> ARK. CODE ANN. § 9-11-109 (2012).	YES <i>Constitutional</i> ARK. CONST. amend. 83, § 1 <i>Statute</i> ARK. CODE ANN. § 9-11-109 (2012). ARK. CODE ANN. § 9-11-208 (2012).	Prohibited <i>Constitutional</i> ARK. CONST. amend. 83, § 2 (2011).	No applicable statute or amendment.	Minor changes to statutory language of § 9-11-208 signed by the Governor 3/30/11. S.B. 628, 88th Gen. Assemb., 2011 Reg. Sess. (Ark. 2011).
California	As a result of the Supreme Court's	[See left]		Permitted	

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	decision in <i>Hollingsworth v. Perry</i> , same sex marriage is legal in California as of June 28, 2013.			Statutory Domestic partnerships are permitted by statute, and out-of-state same-sex legal unions that are substantially equivalent to California domestic partnerships are explicitly recognized as California partnerships. CAL. FAM. CODE § 299.2.	
Colorado	NO Constitutional COLO. CONST. art. II, § 31 (2012). Statutory COLO. REV. STAT. § 14-2-104 (2012).	YES Constitutional COLO. CONST. art. II, § 31 (2012). Statute COLO. REV. STAT. § 14-2-104 (2012).	Permitted Statute COLO. REV. STAT. § 14-15-101 (2013). (The Colorado Civil Union Act, signed into law 3/21/2013)	Permitted Colorado permits designated beneficiary agreements. The statute does not require that the parties to an agreement be a male and a female. COLO. REV. STAT. § 15-22-104 (2012).	

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
Connecticut	YES CONN. GEN. STAT. § 46b-20 (2013) (defining marriage as the “legal union of two persons”).	N/A Out-of-state same-sex marriages are explicitly recognized pursuant to CONN. GEN. STAT § 46b-28a (2013).	Permitted prior to passage of same-sex marriage statute. CONN. GEN. STAT § 46b-38aa (2013), relating to the issuance of civil union licenses, was repealed. Per CONN. GEN. STAT § 46b-38rr (2013), all civil unions entered into prior to Oct. 1, 2010 were automatically converted into marriages, unless separation, divorce, or annulment proceedings were pending as of that date.	No applicable statute or amendment.	None pending.
Delaware	YES <i>Statutory</i>	NO <i>Statutory</i> DEL. CODE ANN. tit. 13, § 101(d)	Permitted until July 1, 2014 <i>Statutory</i>	No applicable statute or amendment.	

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	DEL. CODE ANN. tit. 13, § 101(a), (d), (e) (2013).	(2013).	DEL. CODE ANN. tit. 13, §§ 218 (2013). No new civil unions solemnized after July 1, 2013. Civil unions entered into prior to that date may be voluntarily converted to marriage; after July 1, 2014 civil unions will be automatically converted to marriage.		
District of Columbia	YES Statutory D.C. CODE § 46-401 (2012) (permitting same-sex marriages and noting that gender-specific statutory terms shall be treated as gender-neutral). The law establishing same-sex marriage amended D.C. CODE § 46-401.01	N/A Pursuant to D.C. CODE § 46-405.01 (2012) (explicitly recognizing out-of-state same-sex marriages). This explicit recognition of same-sex marriages was enacted in 2009.	No applicable statute or amendment.	Permitted Despite the availability of same-sex marriages, domestic partnerships are still available. D.C. CODE § 32-702 (2012).	None pending.

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	(2012), which lists prohibited marriages; the list had previously included same-sex marriages.				
Florida	NO <i>Constitutional</i> FLA. CONST. art. I, § 27 (2013). <i>Statutory</i> FLA. STAT. ANN. § 741.04 (2012).	YES <i>Constitutional</i> FLA. CONST. art. I, § 27 (2013). <i>Statutory</i> FLA. STAT. ANN. § 741.212 (2012).	Prohibited <i>Constitutional</i> FLA. CONST. art. I, § 27 (2013) (“Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.”).	No applicable statute or amendment	None pending.
Georgia	NO <i>Constitutional</i> GA. CONST. art. I, § IV, Para. I (2013).	YES <i>Constitutional</i> Ga. Const. art. I, § IV, Para. I (2013). <i>Statutory</i>	Prohibited <i>Constitutional</i> Ga. Const. Art. I, § IV, Para. I (2013) (“(b) No union	No applicable statute or amendment.	None pending.

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	Statutory GA. CODE ANN. § 19-3-3.1 (2012).	GA. CODE ANN. §19-3-3.1 (2013).	between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. . . .”).		
Hawaii	NO Statutory HAW. REV. STAT. ANN. § 572-1 (2013) Constitutional** Hawaii’s constitutional provision on same-sex marriage only allows for the legislature to ban same-sex marriage and does not itself establish such a prohibition. HAW. CONST. art. I, § 23 (2011).	YES Statutory HAW. REV. STAT. ANN. § 572-3 (2013).	Permitted HAW. REV. STAT. ANN. § 572B(1-11) (2013)	Permitted Hawaii allows for reciprocal beneficiary relationships that extend to same-sex couples certain rights and benefits to which married couples are entitled. HAW. REV. STAT. ANN. §§ 572C-1, 572C-2, 572C-3, 572C-4 (2012), 572C-6 (2013)..	- H.B. 164 , 26th St. Leg. (Haw. 2011) (proposing constitutional amendment to permit same-sex marriage). - H.B. 165, 26th St. Leg. (Haw. 2011) (proposing constitutional amendment defining marriage as a relationship only between a man and a woman). - H.B. 1635 , 26th St.

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					Leg. (Haw. 2011) (proposing statutory amendment that would permit recognition of <i>all</i> out-of-state marriages which are valid in jurisdiction where contracted).
Idaho	NO <i>Constitutional</i> IDAHO CONST. art. III, § 28 (2013). <i>Statutory</i> IDAHO CODE ANN. § 32-201, § 32-209 (2012).	YES <i>Constitutional</i> IDAHO CONST. art. III, § 28 (2013). <i>Statutory</i> IDAHO CODE ANN. § 32-209 (2013) (noting that same-sex marriages are against public policy of Idaho and that such marriages entered into in foreign jurisdictions are void).	Prohibited <i>Constitutional</i> IDAHO CONST. art. III, § 28 (2013).	No applicable statute or amendment.	None pending.
Illinois	NO	YES	Permitted	No applicable statute or amendment.	S. Const. Amend. 16, 97th Gen. Assemb. (Ill.

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	Statutory 750 ILL. COMP. STAT. ANN. 5/201 (2013). 750 ILL. COMP. STAT. ANN. 5/213.1 (2013) (noting that same-sex marriages are against the public policy of Illinois).	Statutory 750 ILL. COMP. STAT. ANN. 5/212 (2013). 750 ILL. COMP. STAT. ANN. 5/213.1 (2013). [See immediate left.]	(eff. June 1, 2011) 750 ILL. COMP. STAT. ANN. 75/5, 75/10, 75-12, 75-20 (2013). Out of state same sex marriages are recognized as civil unions in Illinois		2011) (proposing constitutional amendment establishing that only a marriage between a man and a woman is valid or recognized in the state).
Indiana	NO Statutory IND. CODE ANN. § 31-11-1-1 (2013). A constitutional challenge to this provision made in 2005 failed. <i>Morrison v. Sadler</i> , 821 N.E.2d 15 (Ind. App. 2005).	YES Statutory IND. CODE ANN. § 31-11-1-1 (2013).	No applicable statute or amendment.	No applicable statute or amendment.	- S.J.R. 13, 117th Gen. Assemb., 1st Reg. Sess. (Ind. 2011) (proposing constitutional amendment providing that only marriage between one man and one woman shall be valid or recognized as marriage in the state). -H.J.R. 6, 117th Gen. Assemb., 1st Reg. Sess.

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					(Ind. 2011) (proposing similar constitutional amendment). H.J.R. 6 became Public Law No. 231-2011 on May 13, 2011 and will be subject to vote in the next general election.
Iowa	No applicable statute or amendment. Same-sex marriage permitted by judicial decision. Same-sex marriage has been legalized in Iowa as a result of judicial decision. <i>Varnum v. Brien</i> , 763 N.W.2d 862 (Iowa 2009). <i>Varnum</i> held unconstitutional the language in § 595.2 limiting marriage to heterosexual couples.	Iowa retains a statute refusing recognition of out-of-state same-sex marriages. <i>See</i> § 595.20 (2013) (noting that out-of-state marriages are valid only if they satisfy § 595.2 and are otherwise valid). Further research is required to determine how <i>Varnum</i> impacts this statute.	No applicable statute or amendment.	No applicable statute or amendment.	-H.B. 330, 84th Gen. Assemb., 1st Sess. (Iowa 2011) (proposing statutory ban on same-sex marriage). <i>See also</i> H.B. 577. -H.J.R. 6, 84th Gen. Assemb., 1st Sess. (Iowa 2011) (proposal for constitutional ban on same-sex marriage). <i>See</i>

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					<i>also</i> S.J.R. 3 (proposal for constitutional amendment that would also ban civil unions); S.J.R. 8 (same). -House Resolutions 47 to 50 seek to impeach four Iowa Supreme Court Justices for their part in <i>Varnum v. Brien</i> .
Kansas	NO <i>Constitutional</i> KAN. CONST. art. 15, § 16 (2013). <i>Statutory</i> KAN. STAT. ANN. § 23-101 (2012) REPEALED.	YES <i>Constitutional</i> KAN. CONST. art. 15, § 16 (2013). <i>Statutory</i> KAN. STAT. ANN. § 23-115 (2011) transferred to 23-2508 (2012).	Prohibited <i>Constitutional</i> KAN. CONST. art. 15, § 16 (2013).	Prohibited KAN. CONST. art. 15, § 16 (2013) (noting that only marriage can entitle parties to the rights or incidents of marriage).	None pending.
Kentucky		YES <i>Constitutional</i>	Prohibited <i>Constitutional</i>	No applicable statute or	None pending.

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		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	NO <i>Constitutional</i> KY. CONST. § 233a (2013). <i>Statutory</i> KY. REV. STAT. ANN. § 402.005 (2013). KY. REV. STAT. ANN. § 402.020 (2013).	KY. CONST. § 233a (2013). <i>Statutory</i> KY. REV. STAT. ANN. § 402.040 (2013). KY. REV. STAT. ANN. § 402.045 (2013).	KY. CONST. § 233a (2013).	amendment. <i>But note:</i> a domestic partnership statute, if passed, may not give same-sex domestic partnerships legal effect that is the same or substantially equal to that of marriage. <i>See</i> KY. CONST. § 233a (2013).	
Louisiana	NO <i>Constitutional</i> LA. CONST. art. XII, § 15 (2013). <i>Statutory</i> LA. CIV. CODE art. 89 (2012). LA. CIV. CODE art. 3520 (2012).	YES <i>Constitutional</i> LA. CONST. art. XII, § 15 (2013). <i>Statutory</i> LA. CIV. CODE art. 96 (2012) (noting that same-sex marriages have no civil effect). LA. CIV. CODE art. 3520 (2012).	Prohibited <i>Constitutional</i> LA. CONST. art. XII, § 15 (2013).	Prohibited <i>Constitutional</i> LA. CONST. art. XII, § 15 (2013) (prohibiting the interpretation of any statute or constitutional provision in such a way as to require the legal incidents of marriage to be conferred upon any union other than	None pending.

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				that that between a man and a woman).	
Maine	YES <i>Statutory</i> ME. REV. STAT. tit. 19-A, §§ 650-A, 655 (2012).	NO <i>Statutory</i> ME. REV. STAT. tit. 19-A, § 650-B (2012).	No applicable statute or amendment.	Permitted. <i>Statutory</i> § 2710 (2011).	None Pending.
Maryland	YES <i>Statutory</i> On January 1, 2013, the Civil Marriage Protection Act took effect. Md. Code. Ann. Fam. Law. §§ 2-201, 2-202, 2-406 (2013)	NO (as of May 2012, MD now recognizes out-of-state, same-sex marriages.)	No applicable statute or amendment.	Permitted. <i>Statutory</i> MD. CODE. ANN., HEALTH-GEN. § 6-101 (2011).	None Pending.
Massachusetts	No applicable statute or amendment. Same-sex marriage permitted by judicial decision. Same-sex marriage has been	NO	No applicable statute or amendment.	No applicable statute or amendment.	None pending.

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	legalized in Massachusetts as a result of judicial decision. <i>Goodridge v. Dept. of Public Health</i> , 798 N.E.2d 941 (Mass. 2003).				
Michigan	NO <i>Constitutional</i> MICH. CONST. art. I, § 25 (2011). <i>Statutory</i> MICH. COMP. LAWS § 551.1, 551.2, 551.3, 551.4 (2013).	YES <i>Constitutional</i> MICH. CONST. art. I, § 25 (2011). <i>Statutory</i> MICH. COMP. LAWS § 551.1 (2013). MICH. COMP. LAWS §§ 551.271, 272 (2013).	NO <i>Constitutional</i> MICH. CONST. art. I, § 25 (2011) (“To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.”).	No applicable statute or amendment.	None pending.
Minnesota	YES <i>Statutory</i>	NO <i>Statutory</i>	No applicable statute or	No applicable statute or	

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	MINN. STAT. § 517.01 (2010). MINN. STAT. § 517.03 (2013) Amended. (“Marriage between two persons.”)	MINN. STAT. § 518.01 (2010) (noting that all marriages prohibited by § 517.03, including same-sex marriages, are absolutely void).	amendment.	amendment.	
Mississippi	NO <i>Constitutional</i> MISS. CONST. art. 14, § 263A (2011). <i>Statutory</i> MISS. CODE ANN. § 93-1-1 (2011).	YES <i>Constitutional</i> MISS. CONST. art. 14, § 263A (2011). <i>Statutory</i> MISS. CODE ANN. § 93-1-1 (2011).	No applicable statute or amendment.	No applicable statute or amendment.	None pending.
Missouri	NO <i>Constitutional</i> MO. CONST. art. I, § 33 (2011). <i>Statutory</i> MO. REV. STAT. § 451.022 (2011).	YES <i>Constitutional</i> MO. CONST. art. I, § 33 (2011). <i>Statutory</i> MO. REV. STAT. § 451.022 (2011).	No applicable statute or amendment.	No applicable statute or amendment.	-H.J.R. 26, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011) (proposal for constitutional amendment iterating Missouri’s state sovereignty and its intent not to recognize or enforce a variety of

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					federal actions, including any action mandating same-sex marriage). <i>See also</i> S.J.R. 15.
Montana	NO <i>Constitutional</i> MONT. CONST. art. XIII, § 7 (2012). <i>Statutory</i> MONT. CODE ANN. § 40-1-103 (2012). MONT. CODE ANN. § 40-1-401 (2012).	YES <i>Constitutional</i> MONT. CONST. art. XIII, § 7 (2012).	No applicable statute or amendment.	No applicable statute or amendment.	None pending.
Nebraska	NO <i>Constitutional</i> NEB. CONST. art. I, § 29 (2012) (“Only marriage between a man and a woman shall be valid or	YES <i>Constitutional</i> NEB. CONST. art. I, § 29 (2012). [See immediate left.]	Prohibited <i>Constitutional</i> NEB. CONST. art. I, § 29 (2012).	Prohibited <i>Constitutional</i> NEB. CONST. art. I, § 29 (2012).	None pending.

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	recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.”).				
Nevada	NO <i>Constitutional</i> NEV. CONST. art. 1, § 21 (2011). <i>Statutory</i> NEV. REV. STAT. ANN. § 122.020 (2013) (“a male and female person.”).	YES <i>Constitutional</i> NEV. CONST. art. 1, § 21 (2011). [See immediate left.]	No applicable statute or amendment.	Permitted Nev. Rev. Stat. Ann. § 122A.100 (2013) (providing that all that is required for parties to enter into domestic partnership is “desire of their own free will” to do so and satisfaction of procedural requirements). By explicit statutory directive, Nevada recognizes as domestic	None pending.

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				partnerships all legal unions of same-sex couples formed in other states that are substantially equivalent to domestic partnerships created in Nevada. Nev. Rev. Stat. Ann. § 122A.500 (2013).	
New Hampshire	YES <i>Statutory</i> N.H. REV. STAT. ANN. § 457:1-a (2013). <i>Note:</i> § 457:4 establishes higher age limits for same-sex marriages as opposed to opposite-sex marriages.	N/A Pursuant to N.H. REV. STAT. ANN. § 457:3 (2013), New Hampshire recognizes all out-of-state marriages that are properly entered into in the state that issued the marriage license and that are otherwise valid.	Permitted prior to passage of same-sex marriage statute. Per N.H. REV. STAT. § 457:46 (2013), no new civil union licenses were issued after Jan. 1, 2010. The same-sex marriage statute converted into marriages all civil unions entered into prior to that date. Also, N.H.	No applicable statute or amendment.	

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			REV. STAT. § 457:45 provides for recognition of out-of-state civil unions as marriages.		
New Jersey	NO Although there is no specific statute restricting marriage to a male and a female, marriage statutes that utilize gender-specific statutes have been taken to mean that marriage is limited heterosexual couples. <i>See Lewis v. Harris</i> , 908 A.2d 196, 208 (N.J. 2006) In February 2012, Republican Governor Chris Christie vetoed a bill that would have allowed same-sex marriage. Democrats in the N.J. legislature however have	NO	Permitted N.J. Stat. § 37:1-28 (2013). Same-sex couples were permitted to enter into civil unions beginning on Feb. 19, 2007. Civil unions entered into in foreign jurisdictions are also recognized as valid per § 37:1-34.	Permitted prior to passage of civil unions statute. Pursuant to § 26:8A-1 to 13, no new domestic partnerships were registered after Feb. 19, 2007.	None.

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	vowed to override the gubernatorial veto in the next legislative session.				
New Mexico	No applicable statute or amendment.	Neutral statute on recognition of out-of-state marriages. N.M. STAT. ANN. § 40-1-4 (2012).	No applicable statute or amendment.	No applicable statute	-H.B. 162, 50th Leg. 1st Reg. Sess. (N.M. 2011) (proposal to amend § 40-1-4 to deny recognition to out-of-state same-sex marriages, civil unions, and similar relationships). -
New York	YES <i>Statutory</i> Codified in June 2011, the Marriage Equality Act makes same-sex marriage legal in New York. (NY CLS Dom Rel. § 1	NO	No applicable statute or amendment.	No applicable statute or amendment.	None pending.

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	(2013); NY CLS Dom Rel. § 10-a (2012).)				
North Carolina	NO Constitutional N.C. Const. art: XIV § 6 (2012) Statutory N.C. GEN. STAT. § 51-1 (2013).	YES Constitutional N.C. Const. art: XIV § 6 (2012) Statutory N.C. GEN. STAT. § 51-1.2 (2013).	No applicable statute or amendment.	No applicable statute or amendment.	None Pending.
North Dakota	NO Constitutional N.D. CONST. art. XI, § 28 (2011). Statutory N.D. CENT. CODE § 14-03-01 (2013).	YES Constitutional N.D. CONST. art. XI, § 28 (2011). Statutory N.D. CENT. CODE § 14-03-08 (2013).	Prohibited Constitutional N.D. CONST. art. XI, § 28 (2011) (noting that no domestic union between a same-sex couple, however denominated, will be recognized as marriage or given the same or substantially equivalent legal effect).	No applicable statute or amendment. <i>But note:</i> a domestic partnership statute, if passed, may not give same-sex domestic partnerships legal effect that is the same or substantially equal to that of marriage. <i>See</i> N.D. CONST. art. XI, § 28 (2011).	None pending.

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Ohio	NO <i>Constitutional</i> OHIO CONST. art. XV, § 11 (2011). <i>Statutory</i> OHIO REV. CODE ANN. § 3101.01 (2013).	YES <i>Constitutional</i> OHIO CONST. art. XV, § 11 (2011). <i>Statutory</i> OHIO REV. CODE ANN. § 3101.01 (2013).	Prohibited <i>Constitutional</i> OHIO CONST. art. XV, § 11 (2011). <i>Statutory</i> OHIO REV. CODE ANN. § 3101.01 (2013) (providing that no specific statutory benefits of marriage will extend to same-sex couples).	Prohibited <i>Constitutional</i> OHIO CONST. art. XV, § 11 (2011). <i>Statutory</i> OHIO REV. CODE ANN. § 3101.01 (2013) . [See immediate left.]	None pending.

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Oklahoma	NO <i>Constitutional</i> OKLA. CONST. art. II, § 35 (2011). <i>Statutory</i> OKLA. STAT. tit. 43, § 3.1 (2013).	YES <i>Constitutional</i> OKLA. CONST. art. II, § 35 (2011) (“Marriage in this state shall consist only of the union of one man and one woman. Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.”). <i>Statutory</i> OKLA. STAT. tit. 43, § 3.1 (2013).	Prohibited OKLA. CONST. art. II, § 35 (2011) . [See immediate left.]	No applicable statute or amendment.	None pending.
Oregon	NO <i>Constitutional</i> OR. CONST. art. XV, § 5a (2011). <i>Statutory</i> OR. REV. STAT. § 106.010 (2011).	YES <i>Constitutional</i> OR. CONST. art. XV, § 5a (2011).	No applicable statute or amendment.	Permitted <i>Statutory</i> OR. REV. STAT. § 106.305 (2011) (noting legislative findings).	None pending.

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		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
				OR. REV. STAT. § 106.315 (2011).	
Pennsylvania	NO <i>Statutory</i> 23 PA. CONS. STAT. § 1102 (2013). 23 PA. CONS. STAT. § 1704 (2013).	YES <i>Statutory</i> 23 PA. CONS. STAT. § 1704 (2013).	No applicable statute or amendment.	No applicable statute or amendment.	On July 9, 2013, the ACLU filed suit in federal District Court to overturn PA's statutory ban on same-sex marriage
Rhode Island	YES Effective August 1, 2013, same sex marriage is legal in R.I. (Passed and signed into law May 2, 2013) <i>Statutory</i> R.I. S.J.R. 2987 (NS) 2011 R.I. Gen. Laws section 15-3.1-8 (2012)	Out of state same-sex marriages are recognized in R.I. since May 14, 2012	Yes. R.I. Admin. Code. 60-1-227:5	No applicable statute or amendment.	-S.B. 376 , 2011-12 Leg. Sess. (R.I. 2011) (proposing act that would establish domestic unions).
South Carolina	NO	YES	Prohibited	Prohibited	None pending.

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
	<i>Constitutional</i> S.C. Const. art. XVII, § 15 (2010). <i>Statutory</i> § 20-1-10 (2012). § 20-1-15 (2012).	<i>Constitutional</i> S.C. Const. art. XVII, § 15 (2010). <i>Statutory</i> § 20-1-15 (2012).	<i>Constitutional</i> S.C. Const. art. XVII, § 15 (2010).	<i>Constitutional</i> S.C. Const. art. XVII, § 15 (2010).	
South Dakota	NO <i>Constitutional</i> S.D. CONST. art. XXI, § 9 (2011). <i>Statutory</i> S.D. CODIFIED LAWS § 25-1-1 (2013).	YES <i>Constitutional</i> S.D. CONST. art. XXI, § 9 (2011). <i>Statutory</i> S.D. CODIFIED LAWS § 25-1-38 (2013).	Prohibited <i>Constitutional</i> S.D. CONST. art. XXI, § 9 (2011).	Prohibited <i>Constitutional</i> S.D. CONST. art. XXI, § 9 (2011).	None pending.
Tennessee	NO <i>Constitutional</i> TENN. CONST. art. XI, § 18 (2011). <i>Statutory</i> TENN. CODE ANN. § 36-3-113 (2013).	YES <i>Constitutional</i> TENN. CONST. art. XI, § 18 (2011). <i>Statutory</i> TENN. CODE ANN. § 36-3-113 (2013).	No applicable statute or amendment.	No applicable statute or amendment.	None pending.
Texas	NO	YES	Prohibited	No applicable statute or	H.J.R. 102 , 82d Leg. (Tex. 2011) (proposal to

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages?	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION
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	<i>Constitutional</i> TEX. CONST. art. I, § 32 (2011). <i>Statute</i> TEX. FAM. CODE § 2.001 (2012). TEX. FAM. CODE § 6.204 (2012).	<i>Constitutional</i> TEX. CONST. art. I, § 32 (2011). <i>Statute</i> TEX. FAM. CODE § 6.204 (2012).	<i>Constitutional</i> TEX. CONST. art. I, § 32 (2011). <i>Statute</i> TEX. FAM. CODE § 6.204 (2012).	amendment. <i>But note:</i> To the extent Texas considers domestic partnerships to be a legal status “similar to marriage,” domestic partnerships are barred. <i>See</i> TEX. CONST. art. I, § 32 (2011).	repeal constitutional ban on same-sex marriage).
Utah	NO <i>Constitutional</i> UTAH CONST. art. I, § 29 (2011). <i>Statutory</i> UTAH CODE ANN. § 30-1-2 (2013). § 30-1-4.1 (2013).	YES <i>Constitutional</i> UTAH CONST. art. I, § 29 (2011). <i>Statutory</i> UTAH CODE ANN. § 30-1-2 (2013). UTAH CODE ANN. § 30-1-4.1 (2013).	Prohibited <i>Constitutional</i> UTAH CONST. art. I, § 29 (2011). (“No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.”). <i>Statutory</i>	Prohibited <i>Constitutional</i> UTAH CONST. art. I, § 29 (2011). [See immediate left.] <i>Statutory</i> UTAH CODE ANN. § 30-1-4.1 (2013). [See immediate left.]	None pending.

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			UTAH CODE ANN. § 30-1-4.1 (2013) (“Except for the relationship of marriage between a man and a woman recognized pursuant to this chapter, this state will not recognize, enforce, or give legal effect to any law creating any legal status, rights, benefits, or duties that are substantially equivalent to those provided under Utah law to a man and a woman because they are married”).		
Vermont	YES <i>Statute</i> VT. STAT. ANN. tit. 15, § 8 (2012). (“Marriage is the legally recognized union of two people”).	N/A Out-of-state same-sex marriages recognized by repeal of Section 5 of Title 15 relating to limits on recognition of out-of-state marriages.(2012)	Permitted prior to passage of same-sex marriage statute. VT. STAT. ANN. tit. 18, § 5160, relating to the issuance	None relevant. Reciprocal beneficiary relationships are available only to relatives by adoption or blood. VT. STAT. ANN.	None pending.

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		Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.			Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
			of civil union licenses was repealed in 2009.	tit. 15, § 1301 (2011).	
Virginia	NO <i>Constitutional</i> VA. CONST. art. I, § 15-A (2011). <i>Statutory</i> VA. CODE ANN. § 20-45.2 (2013).	YES <i>Constitutional</i> VA. CONST. art. I, § 15-A (2011). <i>Statutory</i> VA. CODE ANN. § 20-45.2 (2013).	Prohibited <i>Constitutional</i> VA. CONST. art. I, § 15-A (2011). <i>Statutory</i> VA. CODE ANN. § 20-45.3 (2013) (noting also that civil unions from outside Virginia will not be recognized).	Prohibited <i>Constitutional</i> VA. CONST. art. I, § 15-A (2011).	None pending.
Washington	Yes. <i>Statutory</i> Washington Referendum 74: passed on November 6, 2013. Same sex marriage is legal in Washington state.	YES <i>Statutory</i> WASH. REV. CODE § 26.04.020 (2013).	No applicable statute or amendment.	Permitted (As a result of the legalization of same sex marriage, after June 30, 2014, Domestic Partnerships will only be available when at least one	

STATE	Same-Sex Marriage Permitted?	Explicit Refusal to Recognize Out-of-State Same-Sex Marriages? Note: Only explicit refusals to recognize out-of-state same-sex marriages have been included in this column, such as provisions recognizing only opposite-sex marriage as valid in the state or expressly declining recognition of out-of-state same-sex marriages. Provisions that merely define marriage as between a male and a female do not qualify for inclusion.	STATUS OF CIVIL UNIONS	STATUS OF DOMESTIC PARTNERSHIP	PENDING LEGISLATION Positive pending legislation, i.e., legislation supporting same-sex marriage or other same-sex relationships, is noted in BOLD.
				of the partners is 62 years old or above.) WASH. REV. CODE § 26.60.010 (2013). WASH. REV. CODE § 26.60.015 (2013) (providing that domestic partners will be treated the same as married spouses). WASH. REV. CODE § 26.60.030 (2013) (noting requirements for state registered domestic partnership). WASH. REV. CODE § 26.60.090 (“A legal union of two persons of the same sex that was validly formed in another jurisdiction, and that is substantially	

Wisconsin	NO	YES	Prohibited		None pending.
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				equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.”).	
West Virginia	NO <i>Statutory</i> W. VA. CODE § 48-2-401 (2011).	YES <i>Statutory</i> W. VA. CODE § 48-2-603 (2013).	No applicable statute or amendment.	No applicable statute or amendment.	, None Pending.

	<p>Constitutional WIS. CONST. Art. XIII, § 13 (“Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.”).</p> <p>Statutory WIS. STAT. § 765.001(2) (2012) (“Under the laws of this state, marriage is a legal relationship between 2 equal persons, a <i>husband and wife</i>, who owe to each other mutual responsibility and support.”) (emphasis added). WIS. STAT. § 765.01 (2012) (“Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of <i>husband and wife</i>.”) (emphasis added).</p>	<p>Constitutional WIS. CONST. Art. XIII, § 13</p> <p>Statutory WIS. STAT. § 765.04 (2012) (declaring invalid marriages entered into by Wisconsin residents under the laws of another state to circumvent Wisconsin marriage laws). WIS. STAT. § 765.30 (2012) (providing penalties for violations of § 765.04).</p>	<p>Constitutional WIS. CONST. Art. XIII, § 13 (2012). (“A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.”)</p>	<p>Permitted Statutory WIS. STAT. § 770.05 (2012) (describing criteria for domestic partnership with no mention of requirement that partners be of opposite sexes). WIS. STAT. § 770.001 (2012) (noting that legal status of domestic partnership “is not substantially similar to that of marriage” and that section is not in conflict with Art. XXIII of the Wyoming Constitutional).</p>	
Wyoming	<p>NO</p> <p>Statutory WYO. STAT. ANN. § 20-1-101 (2012) (“Marriage is a civil contract between a male and a female person to which the consent of the parties capable of contracting is essential.”)</p>	NO	No applicable statute or amendment.	No applicable statute or amendment.	<p>H.B. 74, 61st Legis. (Wyo. 2011) (proposing statutory amendment providing that marriages other than of a male and a female person are void). <i>Last Action:</i> last action on Feb. 18, 2011; passed Senate – to House for concurrence.</p>

CIRCUIT	Explicit Endorsement	DOMA in the U.S. Circuit Courts	Pending Cases
1 st Circuit	Rejects DOMA.	<p>The First Circuit Court of Appeals in <i>Massachusetts v. U.S. Dept. of Health & Human Servs.</i>, ruled that Section 3 of the Defense of Marriage Act is unconstitutional when it was used to deny same-sex couple federal unemployment benefits.</p> <p>In <i>Gill v. Office of Personal Mgmt.</i>, the District Court of Massachusetts declared DOMA unconstitutional when it denied federal health benefits to a same sex couple partner working at the United States Postal Service.</p>	No.
2 nd Circuit	No.	No relevant case law.	The Eastern District Court of New York was to hear arguments in the second half of 2012 about the constitutionality of DOMA in regards to same-sex couple immigration rights in <i>Blesch v. Holder</i> . A stay was issued pending the Supreme Court's decision in <i>United States v. Windsor</i> . Oral argument has not yet been re-scheduled as of July 1, 2013.
3 rd Circuit	No.	No relevant case law.	No.
4 th Circuit	No.	No relevant case law.	No.
5 th Circuit	Yes.	In <i>Walker v. Barbour</i> , CIVIL ACTION NO. 3:08 cv96-TSL-JCS., 2009 BL 51102 (S.D. Miss. Mar. 12, 2009) the Southern District Court for Mississippi cited to DOMA in support for the dismissal of a plaintiff's civil action which challenged the constitutionality of Mississippi's denial of same sex marriage.	No.
6 th Circuit	No.	No relevant case law.	No.

CIRCUIT	Explicit Endorsement	DOMA in the U.S. Circuit Courts	Pending Cases
7 th Circuit	No.	In <i>Revelis v. Napolitano</i> , Case No. 11 C 1991., 2012 BL 2809 (N.D. Ill. Jan. 05, 2012), the Northern District Court for Illinois refused to allow a motion to dismiss—concluding that the plaintiff and his same-sex partner did have standing and in direct opposition to DOMA.	The Illinois District Court was hear arguments in <i>Napolitano</i> in 2013 in respect to the constitutionality of DOMA. The case was dismissed without prejudice on Defendants’ oral motion.
8 th Circuit	No.	No relevant case law.	No.
9 th Circuit	Rejects DOMA.	<p>The District Court for the Northern District of California found in <i>Golinski v. United States Office of Personnel Management</i> that DOMA was unconstitutional when it denied federal unemployment benefits to a same-sex couple.</p> <p>The Ninth Circuit Court of Appeals in <i>In re Levenson</i>, held that the denial of a deputy federal public defender’s request that his same-sex spouse be made a family-member beneficiary of federal health benefits violated the Due Process Clause as applied. 587 F.3d 925 (9th Cir. 2009).</p>	The 9 th Circuit Court of Appeals was to begin hearing oral arguments for <i>Golinski</i> in September 2012; however, the Ninth Circuit held the case in abeyance pending a decision on certiorari from the Supreme Court. The Supreme Court denied certiorari on June 27, 2013. Oral arguments have not been rescheduled as of July 1, 2013
10 th Circuit	No.	No relevant case law.	No.
11 th Circuit	Yes.	In <i>Wilson v. Ake</i> , 354 F. Supp. 2d 1298 (M.D. Fla. 2005), the Florida’s Middle District Court upheld the constitutionality of DOMA and dismissed the plaintiff’s civil action which demanded the recognition in Florida of a same-sex marriage valid under Massachusetts law.	No.
Federal Circuit	No.	No relevant case law.	No.

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEE'S INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
Alabama	<u>Effective No</u> § 26-10A-6. An adult may only be adopted if "a. He or she is an individual with a total and permanent disability. b. He or she is determined to be a person with an intellectual disability. c. He or she consents in writing to be adopted and is related in any degree of kinship, as defined by the intestacy laws of Alabama, or is a stepchild by marriage. d. He or she consents in writing to be adopted by an adult man and woman who are husband and wife." § 43-41-1 through § 43-41-3 addressed adult adoption for inheritance purposes, but those sections were repealed.	N/A		<u>None Found</u>
Alaska	<u>Yes</u> ALASKA STAT. § 25.23.010 (2013) ("Any person may be adopted.").	<u>Possible</u> ALASKA STAT. § 13.12.114 (2013) ("(a) Except as provided in (b) -- (d) of this section, for purposes of intestate succession by, through, or from a person,	<u>None Found</u>	<u>None Found</u>

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		an individual is the child of the individual's natural parents . . . (b) An adopted individual is the child of the individual's adopting parent or parents and not of the individual's natural parents."").		
Arizona	<u>Yes</u> <i>but with age and "best interest" restrictions</i> ARIZ. REV. STAT. ANN. § 14-8101(A) (2013) ("An adult may be adopted by another adult if the prospective adoptee is at least 18 years of age but not more than 21 years of age. The adoption petition must also indicate why the adoption would be in the best interest of the prospective adoptive parent, the prospective adoptee, and the public."").	<u>Yes</u> Ariz. Rev. Stat. Ann. § 14-8101(B) (2013) ("B. The agreement of adoption shall be in writing, shall be executed by the person adopting the person to be adopted and <i>shall state that the parties agree to assume toward each other the legal relation of parent and child and to have all of the rights and to be subject to all of the duties and responsibilities of that relation.</i> ").		<u>None Found</u>
Arkansas	<u>Yes</u> ARK. CODE ANN. § 9-9-203 (2012) ("Any individual may be adopted."").	<u>Possible</u> ARK. CODE ANN. § 9-9-215 (2012) ("(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to	<u>None Found</u> <i>[Note:</i> No case discusses adult adoption in the context of the modern statutory scheme.]	<u>None Relevant</u>

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		matters within the jurisdiction or before a court of this state . . . (2) To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect."").		
California	<u>Yes</u> CAL. FAM. CODE § 9300 (West 2013) (“(a) An adult may be adopted by another adult, including a stepparent, as provided in this part.”).	<u>Yes</u> CAL. FAM. CODE § 9305 (West 2013) (“After adoption, the adoptee and the adoptive parent or parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.”). [<i>Note:</i> This section is found under Part 3, which addresses the “Adoption of Adults and Married Minors.”]		<u>None Found</u>
Colorado	<u>Yes with court approval</u> COLO. REV. STAT. § 19-5-201 (2013) (“Upon approval of the court, a person eighteen years of age or older and under	<u>Yes</u> COLO. REV. STAT. § 19-5-211(1) (2013) (“After the entry of a final decree of adoption, the person adopted shall be, to		

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	twenty-one years of age <i>may be adopted as a child, and all provisions of this part 2 referring to the adoption of a child shall apply to such a person.</i> ").	all intents and purposes, the child of the petitioner. He shall be entitled to all the rights and privileges and be subject to all the obligations of a child born in lawful wedlock to the petitioner."). § 19-5-211 is, as a provision of Part 2, applicable to adult adoptees per § 19-5-201 (<i>see left</i>).		
Connecticut	<u>Yes with age restriction</u> CONN. GEN. STAT. § 45a-734(a) (2013) ("Any person eighteen years of age or older may, by written agreement with another person at least eighteen years of age but younger than himself or herself, unless the other person is his or her wife, husband, brother, sister, uncle or aunt of the whole or half-blood, adopt the other person as his or her child, provided the written agreement shall be approved by the [relevant] court . . .").	<u>Yes</u> Once an adult has been adopted, "the adopted person shall become the legal child of the adopting person, and the adopting person shall become the legal parent of the adopted person, and the provisions of section 45a-731 shall apply." CONN. GEN. STAT. § 45a-734(b) (2011). Once a person has been adopted, the adoptee is to "be treated as if such adopted person were the biological child of the adopting parent for purposes of the applicability of all documents or instruments, whether executed before or after the adoption decree is issued, which do not expressly include an adopted person in their operation or effect. The words 'child,' 'children,' 'issue,' 'descendant,' 'descendants,' 'heir,' 'heirs,' 'lawful heirs,' 'grandchild' and		<u>None Found</u>

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		'grandchildren,' when used in any will or trust instrument shall include legally adopted persons unless such document clearly indicates a contrary intention." CONN. GEN. STAT. § 45a-731(4) (2013).		
Delaware	<u>Yes</u> DEL. CODE ANN. tit. 13, § 951 (2013). ("Any person, or any husband and wife jointly, desiring to adopt any person or persons upwards of 18 years of age, shall file a petition in the Family Court of the county in which the petitioner or the person to be adopted resides.").	<u>Yes</u> DEL. CODE ANN. tit. 13, § 954 (2013). ("Upon the issuance of the decree of adoption and forever thereafter, all the duties, rights, privileges and obligations recognized by law between parent and child shall exist between the petitioner or petitioners and the person or persons adopted, as fully and to all intents and purposes as if such person or persons were the lawful and natural offspring or issue of the petitioner or petitioners."). [Note: § 954 is located under the same chapter and subchapter as § 951, namely Chapter 9 ("Adoption") and Subchapter II ("Persons 17 Years of Age or Over").] DEL. CODE ANN. tit. 12, § 508 (2013) ("If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession <i>by, through, or from a person</i> : An adopted <i>person</i> is the <i>child</i> of an adopting parent and not of the natural parent	<i>Positive:</i> <u>Wilmington Trust Co. v. Chichester, 369 A.2d 701 (Del. Ch. 1976)</u> (examining statutory scheme and concluding that adult adoptees can inherit not only from their adoptive parents but also by right of representation through their adoptive parents).	

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		except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.”).		
District of Columbia	<u>Yes</u> D.C. CODE § 16-303 (2012) (“A person, whether a minor or an adult, may be adopted.”).	<u>Possible</u> D.C. CODE § 16-312 (2012) provides that a “final decree of adoption establishes the relationship of natural parent and natural child between <i>adopter and adoptee</i> for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adopter.” Nothing suggests § 16-312 would not apply to adult intestate inheritance rights.	In <u>O’Connell v. Riggs Natl. Bank of Washington</u> , 475 A.2d 405, 409 (D.C. 1984), the court, in dicta, noted that § 16-312 “grant[ed] adoptees, be they minors or adults, the right to inherit through, as well as from the adopting parent.”	<u>None Found</u>
Florida	<u>Yes</u> FLA. STAT. ANN. § 63.042(1) (2012) (“Any person, a minor or an adult, may be adopted.”).	<u>Possible</u> FLA. STAT. ANN. § 732.108 (2012) (“For the purpose of intestate succession by or from an adopted <i>person</i> , the adopted person is a descendant of the adopting parent and is one of the natural kindred of all members of the adopting parent's family, and is not a descendant of his or her natural parents, nor is he or she one of the kindred of any member of the natural parent's family or any prior adoptive	<u>None Found</u> <i>[Note:</i> No case discusses adult adoption in the context of the modern statutory scheme.]	<u>None Found</u>

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		parent's family . . .").		
Georgia	<u>Yes</u> GA. CODE ANN. § 19-8-21(a) (2012) ("Adult persons may be adopted on giving written consent to the adoption."").	<u>Yes</u> GA. CODE ANN. § 19-8-21(b) (2012) ("Code Section 19-8-19, relating to the effect of a decree of adoption . . . shall also apply to the adoption of adults.""). GA. CODE ANN. § 19-8-19(2) (2012) "A decree of adoption creates the relationship of parent and child between each petitioner and the adopted individual, as if the adopted individual were a child of biological issue of that petitioner. The adopted individual shall enjoy every right and privilege of a biological child of that petitioner; shall be deemed a biological child of that petitioner, to inherit under the laws of descent and distribution in the absence of a will, and to take under the provisions of any instrument of testamentary gift, bequest, devise, or legacy, whether executed before or after the adoption is decreed, unless expressly excluded therefrom; shall take by inheritance from relatives of that petitioner; and shall also take as a 'child' of that petitioner under a class gift made by the		<u>None Found</u>

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		will of a third person."		
Hawaii	<u>Yes</u> HAW. REV. STAT. § 578-1.5 (2013) ("Any person may be adopted under this chapter; provided that an adult to be adopted must give written consent to the adoption."").	<u>Yes</u> HAW. REV. STAT. § 560:2-114 (2013) ("(b) An adopted individual is the child of the child's adopting parent or parents and not of the child's natural parents..."). HAW. REV. STAT. § 578-16 (2013) ("(a) A legally <i>adopted individual</i> shall be considered to be a natural child of the whole blood of the adopting parent or parents as provided in the Uniform Probate Code, relating to the descent of property."). [<i>Note:</i> In addition to the age-neutral language emphasized above, the statute also makes reference to the legal impact of adoption when the child has not yet reached the age of majority. <i>See</i> Subsection (e) (§ 578-16(e)) (referencing situations where "an individual is adopted before that individual attains the age of majority" and thus indicating that the section as a whole is otherwise age neutral).	<u>None Found</u>	H.B. 1453, 26th St. Leg., Reg. Sess. (Hi. 2011) (proposing amendment of numerous statutes to make them consonant with newly passed statute permitting civil unions).

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Idaho	<p><u><i>Yes with nature of relationship restriction</i></u></p> <p>IDAHO CODE ANN. § 16-1501 (2012) allows adults to be adopted provided that the prospective adoptive parent has sustained the relation of parent to the prospective adoptee for a period of over one year while the adoptee was a minor or for such period of time or in such manner as to lead the court to find that a "substantial family relationship" has been created.</p>	<p><u>Yes</u></p> <p>IDAHO CODE ANN. § 15-2-109 (2012) (with some exceptions, "[i]f, for purposes of intestate succession, a relationship of parents and child must be established to determine succession by, through, or from a person, . . . [a]n adopted person is a child of an adopting parent and not of the natural parents.").</p> <p>IDAHO CODE ANN. § 16-1508 (2012) ("A child or adult, when adopted, may take the name of the person adopting, and the two (2) shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of section 14-103 [15-2-103], Idaho Code, and to the same extent as a child of the whole blood."). [Note: § 15-2-103 addresses "[s]hare of heirs other than surviving spouse."]</p>		<p><u>None Found</u></p>

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Illinois	<u>Effectively No</u> 750 ILL. COMP. STAT. 50/3 (2013) ("A male or female child, or an adult, may be adopted, provided the other conditions set forth in this Act are met, and further provided, with respect to an adult, that such adult has resided in the home of the persons intending to adopt him at any time for more than 2 years continuously preceding the commencement of an adoption proceeding, or in the alternative that such persons are related to him within a degree set forth in the definition of a related child in Section 1 of this Act [750 ILCS 50/1].").	<u>N/A</u>	<i>Positive: In re Estate of Brittin, 664 N.E. 2d 687, 690 (Ill. App. Ct. 5th Dist. 1996)</i> "The adoptee, regardless of his age upon adoption, attains the status of a natural child of the adopting parents."	<u>None Relevant</u>
Indiana	<u>Yes</u> IND. CODE § 31-19-2-1 (2013) ("(a) An individual who is at least eighteen (18) years of age may be adopted by a resident of Indiana").	<u>Possible</u> IND. CODE § 29-1-2-8 (2013) ("For all purposes of intestate succession, including succession by, through, or from a person, both lineal and collateral, an adopted child shall be treated as a natural child of the child's adopting parents, and the child shall cease to be treated as a child of the natural parents and of any previous adopting parents."). <i>[Note:</i> although the statute uses the phrase	<u>Scott v. Peters, 158 N.E. 490 (Ct. App. 1927)</u> (confirming testator's intent that adult adoptee "should thereafter be his <i>child</i> and that, as such, she should inherit his estate").	<u>None Found</u>

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		"adopted child," an adult adoptee may be described as an adopted 'child.' <i>See right.]</i>		
Iowa	<u>Yes</u> IOWA CODE § 600.3 (2012) ("1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition."").	<u>Possible</u> IOWA CODE § 633.223 (2012) ("1. Except as provided in subsection 3, a lawful adoption extinguishes the right of intestate succession of an adopted person from and through the adopted person's biological parents. The adopted person inherits from and through the adoptive parents in the same manner as a biological child inherits from and through the child's biological parents."").		
Kansas	<u>Yes</u> KAN. STAT. ANN. § 59-2113 (2012) ("Any adult, or husband and wife jointly, may adopt any minor or adult as their child . . .").	<u>Yes</u> KAN. STAT. ANN. § 59-2118(b) (2012) provides that "[w]hen adopted, a <i>person</i> shall be entitled to the same personal and property rights as a birth child of the adoptive parent." The immediately preceding subsection, Subsection (a), makes clear that for the purposes of this section, there is no distinction between adult and child adoptees, referring to "any person adopted as provided in [§ 59-		<u>None found.</u>

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		2111] through [§ 59-2143].		
Kentucky	<u>Yes</u> KY. REV. STAT. ANN. § 405.390 (2012) ("An adult person over eighteen (18) years of age may be adopted in the same manner as provided by law for the adoption of a child and <i>with the same legal effect</i> , except that his consent alone to such adoption shall be required."").	<u>Yes</u> KY. REV. STAT. ANN. § 199.520(2) (2012) ("Upon entry of the judgment of adoption, from and after the date of the filing of the petition, the child shall be deemed the child of petitioners and shall be considered for purposes of inheritance and succession and for all other legal considerations, the natural child of the parents adopting it the same as if born of their bodies. Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent."").		<u>None Found</u>
Louisiana	<u>Yes</u> <i>but with "best interest" of both parties requirement</i> LA. CIV. CODE ANN. art. 212 (2012) ("A person who has attained the age of majority may be adopted without judicial	<u>Possible</u> LA. REV. STAT. ANN. § 9:461 (2012) states that "[i]n an adoption in accordance with the first paragraph of Civil Code Article 212, if the adoptive parent is married to a parent of the adopted child at the time of the adoption or was married to a parent at the time of the death of the parent, the relationship of that parent and	Although there are no cases addressing the modern statutory scheme, the Louisiana Court of Appeals once held that the phrase "adoption of a child" in a statute regarding testaments did not refer to the adoption of a minor and held true for both adult and child adoptees. Succession of Calcagnio, 139 So. 2d 277 (La. Ct. App. 1962) . The court noted that there are obvious reasons why the legislature would require procedure for the adoption of an infant	<u>None Found</u>

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	authorization only when the adoptive parent is the spouse or the surviving spouse of a parent of the person to be adopted. In other proposed adult adoptions, the court, upon the joint petition of the adoptive parent and the person to be adopted, may authorize the adoption of a person who has attained the age of majority if the court finds after a hearing that the adoption is in the best interest of both parties."").	his relatives to the adopted child shall remain unaltered and unaffected by the adoption." This suggests that, subject to this proviso, the legal effect of an adult adoption should otherwise follow the general provision in LA. CIV. CODE ANN. art. 199 (2012), which provides that "[u]pon adoption, the adopting parent becomes the parent of the child for all purposes and the filiation between the child and his legal parent is terminated, except as otherwise provided by law. The adopted child and his descendants retain the right to inherit from his former legal parent and the relatives of that parent." Moreover, art. 199 is titled "Effect of Adoption" and is immediately followed by the two separate civil code articles addressing adult and minor adoption.	or a person of tender years different from that required for the adoption of an adult as it has done in the adoption statutes. (LSA-R.S. 9:421-9:441 and LSA-R.S. 9:461, 9:462) But we can see no ground in reason or logic for the legislature to differentiate between the inheritance rights of adopted persons on the basis of age and we cannot presume that it intended to grant to persons adopted under one statute greater rights than to persons adopted under the other statute. <i>Id.</i> at 208. It thus held that "the word 'child' in the Article 1705 was used to signify a status and not to indicate minority." <i>Id.</i>	
Maine	<u>Yes</u> ME. REV. STAT. tit. 18-A, § 9-301 (2012) ("A husband and wife jointly or an unmarried person, resident or nonresident of the State, may petition the Probate Court to adopt a person, regardless of age, and to change that person's name."").	<u>Yes</u> ME. REV. STAT. tit. 18-A, § 9-102 (2012) ("A) 'Adoptee' means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.""). ME. REV. STAT. tit. 18-A, § 9-105 (2012)		None found.

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		("Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption decree so provides, as specified in section 2-109, subsection (1).").		
Maryland	<u>Yes</u> MD. FAMILY LAW CODE ANN. § 5-3B-13 (2013) ("(a) Eligible adoptee. — Any adult or minor may be adopted under this subtitle."").	<u>Yes</u> MD. FAMILY LAW CODE ANN. § 5-3B-25 (2013) ("(c) Adoption of adult. — Adoption of an adult has the same legal effect as adoption of a minor.		<u>None Found</u>
Massachusetts	<u>Yes</u> MASS. GEN. LAWS ch. 210, § 1 (2011) ("A person of full age may petition the probate court in the county where he resides for leave to adopt as his child <i>an-other person younger than himself</i> , unless such other person is his or her wife or husband, or brother, sister, uncle or aunt, of the whole or half blood."").	<u>Possible</u> MASS. GEN. LAWS ch. 190B, §2-114(b)(2013)) ("An adopted individual is the child of his adopting parent or parents and not of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the right of the child or a descendant of the child to inherit from or through either natural parent. The court may decree that the rights of succession to property under this section, or under former section 7 of chapter 210, shall vest in an adopted individual as of	<u>None Found</u> <i>[Note:</i> No case discusses adult adoption in the context of the modern statutory scheme.]	<u>None Found</u>

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		the date of the filing of the petition for adoption.")/		
Michigan	<u>Yes</u> Mich. Comp. Laws § 710.24 (2012) ("[I]f a person desires to <i>adopt a child or an adult</i> and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the [relevant] court . . . ").	<u>Yes</u> Mich. Comp. Laws § 710.60 (2012) ("(2) After entry of the order of adoption, there is no distinction between the rights and duties of natural progeny and adopted persons, and the adopted person becomes an heir at law of the adopting parent or parents and an heir at law of the lineal and collateral kindred of the adopting parent or parents. After entry of the order of adoption, except as provided in section 2114(2) of the estates and protected individuals code, 1998 PA 386, MCL 700.2114, an adopted child is no longer an heir at law of a parent whose rights have been terminated under this chapter or chapter XIIA or the lineal or collateral kindred of that parent, <i>nor is an adopted adult an heir at law of a person who was his or her parent at the time the order of adoption was entered or the lineal or collateral kindred of that person</i> , except that a right, title, or interest that has vested before entry of the final order of adoption is not divested by that order."). [<i>Note:</i> This section refers to the effect of an adoption decree while referencing both adult and child adoptees, suggesting that they should be treated alike.]		<u>None Found</u>

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Minnesota	<u>Yes</u> MINN. STAT. § 259.22 (2013) ("Any person who has resided in the state for one year or more may petition to adopt a child or an adult . . .").	<u>Possible</u> MINN. STAT. § 259.59 (2013) ("Upon adoption, the adopted person shall become the legal child of the adopting persons and they shall become the legal parents of the child with all the rights and duties between them of birth parents and legitimate child. By virtue of the adoption the adopted person shall inherit from the adoptive parents or their relatives the same as though the adopted person were the natural child of the parents, and in case of the adopted person's death intestate the adoptive parents and their relatives shall inherit the adopted person's estate as if the adopted person had been the child's birth parents and relatives.").	<u>In re Trust Created Under Agreement with Lane</u> , 660 N.W.2d 421 (Minn. Ct. App. 2003) (making no distinction between adult and child adoptees in context of will expressly including adopted children where testator's intent to include adult adoptee was clear).	<u>None Relevant</u>
Mississippi	<u>Yes</u> MISS. CODE ANN. § 93-17-3(4) (2011) ("Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult or by a married person whose spouse joins in the petition.").	<u>Possible</u> MISS. CODE ANN. § 93-17-3(4) (2011) ("The word 'child' in this section shall be construed to refer to the person to be adopted, though an adult."). [Note: This language suggests that adult and child adoptees should be treated alike for inheritance purposes.]		<u>None Relevant</u>
Missouri	<u>Yes</u> MO. REV. STAT. ANN. § 453.030.11 (2013)	<u>Yes</u> MO. REV. STAT. ANN. § 453.090 (2013) ("1.		<u>None Relevant</u>

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	("Where the person sought to be adopted is eighteen years of age or older, his written consent alone to his adoption shall be sufficient."").	When a child is adopted in accordance with the provisions of this chapter, all legal relationships and all rights and duties between such child and his natural parents (other than a natural parent who joins in the petition for adoption as provided in section 453.010) shall cease and determine. Such child shall thereafter be deemed and held to be for every purpose the child of his parent or parents by adoption, as fully as though born to him or them in lawful wedlock. 2. Such child shall be capable of inheriting from, and as the child of, his parent or parents by adoption as fully as though born to him or them in lawful wedlock <i>and, if a minor</i> , shall be entitled to proper support, nurture and care from his parent or parents by adoption.""). [<i>Note:</i> By reference to the adoption of minors in subsection 2, the statute indicates that subsection 1 applies generally to both minors and adults.]		
Montana	<u>Yes</u> MONT. CODE ANN. § 42-4-401 (2013) ("A person who has attained the age of legal majority may be adopted without the consent of the person's parents."").	<u>Yes</u> MONT. CODE ANN. § 42-4-405 (2013) ("Except as otherwise provided in this part, the procedure and law for adoption of a child set forth in this title is applicable in proceedings for the adoption of an adult. The provisions concerning the counseling requirement, preplacement evaluation, postplacement supervision		<u>None Relevant</u>

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		period, and postplacement evaluation are not applicable to the adoption of an adult.""). MONT. CODE ANN. § 42-5-202 (2013) ("(1) After the decree of adoption is entered: (a) the relationship of parent and child and all the rights, duties, and other legal consequences of the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive parent . . .").		
Nebraska	<u>Yes</u> NEB. REV. STAT. § 43-101 (2012) ("(2) Any adult child may be adopted by any person or persons . . .").	<u>Possible</u> NEB. REV. STAT. § 43-110 (2012) ("After a decree of adoption is entered, the usual relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the person or persons adopting such child and his, her or their kindred."").	<u>In re Trust Created by Nixon, 763 N.W.2d 404 (Neb. 2009)</u> (concluding that CA adult adoption decree deserved full faith and credit in Nebraska and that <i>adult</i> adoptee was thus entitled to inherit under will that defined "issue" to include "persons legally adopted"). Overall, the court suggested no distinction between adult and child adoptees with respect to inheritance rights.	<u>None Relevant</u>

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Nevada	<p><u>Yes with age restriction</u></p> <p>NEV. REV. STAT. ANN. § 127.190(1) (LexisNexis 2011) ("1. Notwithstanding any other provision of law, any adult person may adopt any other adult person younger than himself or herself, except the spouse of the adopting person, by an agreement of adoption approved by a decree of adoption of the district court in the county in which either the person adopting or the person adopted resides.").</p>	<p><u>Yes</u></p> <p>NEV. REV. STAT. ANN. § 127.160 (LexisNexis 2011) ("Upon the entry of an order of adoption, the child shall become the legal child of the persons adopting the child, and they shall become the child's legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption the child shall inherit from his or her adoptive parents or their relatives the same as though the child were the legitimate child of such parents, and in case of the death of the child intestate the adoptive parents and their relatives shall inherit the child's estate as if they had been the child's natural parents and relatives in fact.").</p> <p>NEV. REV. STAT. ANN. § 127.190(2) (LexisNexis 2011) ("2. The agreement of adoption [between the prospective adoptive parent and prospective adult adoptee (see left, § 127.190(1))] shall be in writing and shall be executed by the person adopting and the person to be adopted, and shall set forth that the parties agree to assume toward each other the legal relation of parent and child, and to have all of the rights and be subject to all of the duties and responsibilities of that relation.").</p>		<p><u>None Found</u></p>

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New Hampshire	<u>Yes</u> <i>but with prerequisites</i> N.H. REV. STAT. ANN. § 170-B:3 (2013) ("Any individual may be adopted, provided, however, that: I. If the adoptee is 14 years of age or older, he or she must assent to the adoption unless the court determines that it is not in the best interests of the adoptee to require assent. Such an assent shall be executed by the adoptee in writing and signed in the presence of the court in which the petition for adoption has been filed.").	<u>Possible</u> N.H. REV. STAT. ANN. § 170-B:25 (2013) ("I. Upon the issuance of the final decree of adoption, the adoptee shall be considered the child of the adopting parent or parents, entitled to the same rights and privileges and subject to the same duties and obligations as if such adoptee had been born of the adopting parent or parents. . . . VI. . . . In the absence of specific language to the contrary, an adoptee shall be considered the same as a birth child, issue or heir of the body.").	<u>None found</u>	<u>None Found</u>
New Jersey	<u>Yes</u> <i>but with multiple restrictions</i> N.J. STAT. ANN. § 2A:22-1 (2013) ("The Superior Court shall allow an unmarried person of full age, a husband with his wife's consent, a wife with her husband's consent or a husband and wife jointly to adopt an adult person and may change the name of the adult, <i>if the court is satisfied that the adopting parent or parents are</i>	<u>Yes</u> N.J. STAT. ANN. § 2A:22-3(c) (2013) ("All rights, privileges and obligations due from the parents by adoption to the person adopted and from the person adopted to them and all relations between such person and them shall be the same as if the person adopted had been born to them in lawful wedlock, including the right to take and inherit intestate personal and real property from and through each other.") [<i>Note:</i> § 2A:22-3 is located under		

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	<p><i>of good moral character and of reputable standing in their community, and that the adoption will be to the advantage and benefit of the person to be adopted.”).</i></p> <p>In addition to the above requirements The adopting parent must be at least ten years older than the adult adoptee. N.J. STAT. ANN. 2A:22-2 (2013).</p>	<p>the chapter addressing “Adoption of Adult.”]</p>		
New Mexico	<p><u>Yes</u></p> <p>N.M. STAT. ANN. § 40-14-5(A) (2012) (“Any adult may be adopted.”).</p>	<p><u>Yes</u></p> <p>N.M. STAT. ANN. § 40-14-13(B) (2012) (“After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child. The adoptee shall have all rights and be subject to all the duties of that relation, including the right of inheritance from and through the petitioner, and the petitioner shall have all rights and be subject to all duties of that relation, including the right of inheritance from and through the adoptee.”)</p>		<p><u>None Found</u></p>

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		"Adoptee" is defined as "any adult who is the subject of an adoption petition." N.M. STAT. ANN. § 40-14-2(A) (2012).		
New York	<u>Yes</u> N.Y. DOM. REL. LAW § 110 (2013). Who may adopt; effect of article. "An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person." The discussion of required consents in § 111 of the Domestic Relations Law include provisions presupposing that adult adoption is permissible. <i>See</i> N.Y. DOM. REL. LAW STAT § 111 (2013).	<u>Yes</u> Section 111 presupposes that adult adoptees are entitled to inherit. N.Y. DOM. REL. LAW STAT § 110 (2013) ("Nothing in this article in regard to an adult adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before [April 22, 1915], nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created.")		<u>None Relevant</u>
North Carolina	<u>Yes</u> N.C. GEN. STAT § 48-1-104 (2012). Who may be adopted. "Any individual may be	<u>Yes</u> N.C. GEN. STAT § 48-1-106 (2012) ("(b) A decree of adoption establishes the relationship		<u>None Found</u>

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	<p>adopted as provided in this Chapter."</p>	<p>of parent and child between each petitioner and the individual being adopted. From the date of the signing of the decree, the adoptee is entitled to inherit real and personal property by, through, and from the adoptive parents in accordance with the statutes on intestate succession and has the same legal status, including all legal rights and obligations of any kind whatsoever, as a child born the legitimate child of the adoptive parents. . . . (e) In any deed, grant, will, or other written instrument executed before October 1, 1985, the words "child", "grandchild", "heir", "issue", "descendant", or an equivalent, or any other word of like import, shall be held to include any adopted person after the entry of the decree of adoption, unless a contrary intention plainly appears from the terms of the instrument, whether the instrument was executed before or after the entry of the decree of adoption. The use of the phrase "hereafter born" or similar language in any such instrument to establish a class of persons shall not by itself be sufficient to exclude adoptees from inclusion in the class. <i>In any deed, grant, will, or other written instrument executed on or after October 1, 1985, any reference to a natural person shall include any adopted person after the entry of the decree of adoption unless the instrument explicitly states that adopted persons are excluded, whether the instrument was executed before or after the entry of the decree of</i></p>		

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		<i>adoption.”).</i> “Adoptee” is defined as “an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.” N.C. GEN. STAT. § 48-1-101 (2012).		
North Dakota	<u>Yes</u> N.D. CENT. CODE § 14-15-2 (2012) (“Any individual may be adopted.”).	<u>Possible</u> N.D. CENT. CODE § 14-15-14 (2012) (“1. A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:... b. To create the relationship of parent and child between petitioner and the <i>adopted individual</i> , as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.”).	<u>None Found</u>	<u>None Found</u>
Ohio		<u>N/A</u>		

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	<u>Effectively No</u> OHIO REV. CODE ANN. § 3107.2 (2013). Who may be adopted – physical examination. “(B) An adult may be adopted under any of the following conditions: (1) If the adult is totally and permanently disabled; (2) If the adult is determined to be a mentally retarded person as defined in section 5123.01 of the Revised Code; (3) If the adult had established a child-foster caregiver or child-stepparent relationship with the petitioners as a minor, and the adult consents to the adoption; (4) If the adult was, at the time of the adult's eighteenth birthday, in the permanent custody of a public children services agency or a private child placing agency, and the adult consents to the adoption.”			
Oklahoma	<u>Yes</u> OKLA. STAT. tit. 10, § 7507-1.1 (2013). (“An adult person may be adopted by any other adult person, with the consent of the person to be adopted or his guardian, if the	<u>Yes</u> OKLA. STAT. tit. 10, § 37 has been converted to OKLA. STAT. tit. 10, § 7505-6.5 (2013) (“A. After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural		<u>None Found</u>

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	<p>court shall approve, and with the consent of the spouse, if any, of an adoptive parent, filed in writing with the court. The provisions of Sections 9 through 36 of this act shall not apply to the adoption of a competent adult person. A petition therefor shall be filed with the district court in the county where the adoptive parents reside. After a hearing on the petition and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the people involved, a decree of adoption may be entered which shall have the legal consequences stated in Section 37 of this act.”).</p>	<p>relation of child and parent shall thereafter exist between the adopted child and the adoptive parents of the child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution. The adoptive parents shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.”).</p>		
Oregon	<p><u>Yes</u></p> <p>OR. REV. STAT. § 109.329 (2013) (“(1) Subject to subsection (2) of this section, any person may petition the circuit court for leave to adopt a person who is 18 years of age or older or who is legally married. The petition shall be accompanied by the written consent of each petitioner and the written consent of the person to be adopted. The written consents shall be filed</p>	<p><u>Possible</u></p> <p>OR. REV. STAT. § 112.175 (2013) (“(1) An adopted person, the issue and kindred of the adopted person shall take by intestate succession from the adoptive parents, their issue and kindred, and the adoptive parents, their issue and kindred shall take by intestate succession from the adopted person, the issue and kindred of the adopted person, as though the adopted person were the natural child of the adoptive parents.”).</p>		<p><u>None Relevant</u></p>

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	with the petition.”).			
Pennsylvania	<u>Yes</u> PA. CONS. STAT. § 2311 (2013) (“Any individual may be adopted, regardless of his age or residence.”).	<u>Possible</u> PA. CONS. STAT. § 2108 (2013) (“For purposes of inheritance by, from and through an adopted person he shall be considered the issue of his adopting parent or parents. An <i>adopted person</i> shall not be considered as continuing to be the child or issue of his natural parents except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.”).	<u>None Found</u> <i>[Note:</i> No case discusses adult adoption in the context of the modern statutory scheme.]	<u>None Found</u>
Rhode Island	<u>Yes</u> R.I. GEN. LAWS. § 15-7-4 (2012) (“(d) Petitions for adoptions of persons eighteen (18) years or older shall be heard by the probate court of the city or town in which the petitioners live.”).	<u>Yes</u> <i>but with restriction on when adult adoption took place</i> R.I. GEN. LAWS. § 15-7-16(a) (2012) (“(a) A child lawfully adopted shall be deemed, for the purpose of inheritance by the child and his or her descendants from the parents by adoption and the lineal and collateral kindred of the parents by	<u>Tinney v. Tinney, 799 A. 2d 235, 237-238 (R.I. 2002)</u> “[T]he term ‘child’...mean[s] son or daughter of a parent, regardless of age, and...there [is] no distinction intended between the inheritance rights of a ‘child’ adopted as a minor and ‘persons’ adopted as adults.”	<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
		adoption, and for the purpose of inheritance by the parents by adoption, and the lineal and collateral kindred of the parents by adoption, from the child and his or her descendants, and for all other legal consequences and incidents of the natural relation of parents and children . . . ; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted after the death of the maker of the instrument.”). [Note: This section is entitled “Inheritance by and from adoptive kindred.”]		
South Carolina	<u>Yes</u> S.C. CODE ANN. § 63-9-1120 (2012) (“An adult person may be adopted by another adult person with the consent of the person to be adopted or his guardian and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of Section 62-2-109 and Sections 63-9-30 through 63-9-760, excluding Section 63-9-740, do not apply to the adoption of an adult person. A petition for the adoption must be filed with the family court in the county where the adoptive parents reside.	<u>Yes</u> S.C. CODE ANN. § 62-2-109 (2012). Meaning of child and related terms. “If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: (1) from the date the final decree of adoption is entered, and except as otherwise provided in § 63-9-1120, an adopted person is the child of an adopting parent and not of the		<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
	After a hearing on the petition and after those investigations as the court considers advisable, if the court finds that it is in the best interests of the persons involved, a decree of adoption may be entered which has the legal consequences stated in <i>Section 62-2-109 [see right]</i> .").	natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent."		
South Dakota	<u>Yes</u> <i>with nature of relationship restriction</i> S.D. CODIFIED LAWS § 25-6-18 (2013). ("An adult may adopt another adult by filing a petition requesting such adoption with the judge of the circuit court, together with an agreement in writing that the person being adopted shall be treated in all respects as a natural child of the petitioner. Written consent of the adopted person shall also be required. It shall be a further prerequisite that the person being adopted shall have lived in the home of the adoptive parent <i>during his minority for a period of at least six months, and this fact shall appear in the petition.</i> ").	<u>Possible</u> S.D. CODIFIED LAWS § 29A-2-114(b) (2013) ("For purposes of intestate succession by, from, or through a person, an adopted individual is the child of that individual's adopting parent or parents and not of that individual's birth parents.").	<u>None Found</u>	<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
Tennessee	<u>Yes</u> TENN. CODE ANN. §36-1-107 (201) (“(a) Any person, irrespective of place of birth, citizenship, or place of residence, may be adopted or readopted in accordance with the provisions of this part. (b) A single person may file a petition for the adoption of a child. (c) An adult may be adopted.”).	<u>Possible</u> TENN. CODE ANN. § 31-2-105(a) (2012) (“If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: (1) An adopted person is the child of an adopting parent and not of the natural parents . . .”). TENN. CODE ANN. §36-1-121(a) (2012) (“The signing of a final order of adoption terminates any existing guardianship orders and establishes from that date the relationship of parent and child between the adoptive parent(s) and the adopted child as if the adopted child had been born to the adoptive parent(s) and the adopted child shall be deemed the lawful child of such parent(s), the same as if the child had been born to the parent(s), for all legal consequences and incidents of the biological relation of parents and children.”).	<u>None Found</u>	<u>None Found</u>
Texas	<u>Yes</u> TEX. FAM. CODE ANN. § 162.501 (West 2011) (“The court may grant the petition of	<u>Yes</u> TEX. FAM. CODE ANN. § 162.507 (West 2011) (“(a) The adopted adult is the son or daughter of the adoptive parents for all		<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
	an adult residing in this state to adopt another adult according to this subchapter."").	purposes. (b) The adopted adult is entitled to inherit from and through the adopted adult's adoptive parents as though the adopted adult were the biological child of the adoptive parents. (c) The adopted adult may not inherit from or through the adult's biological parent. A biological parent may not inherit from or through an adopted adult."").		
Utah	<u>Yes</u> UTAH CODE ANN. § 78B-6-115(2) (2012) "Subject to this section and Section 78B-6-117, any adult may be adopted by another adult."	<u>Yes</u> UTAH CODE ANN. § 78B-6-139 (2012) ("When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.""). UTAH CODE ANN. § 78B-6-115(3) (2012). ("The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor: . . . (ix) Section 78B-6-139 . . .")		

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
Vermont	<u>Yes</u> VT. STAT. ANN. tit. 15A, § 1-102 (2012). Who may adopt or be adopted. "(a) Subject to this title, any person may adopt or be adopted by another person for the purpose of creating the relationship of parent and child between them."	<u>Yes</u> VT. STAT. ANN. tit. 15A, § 1-104 (2012) ("When a decree of adoption becomes final: (1) the adoptive parent and the adoptee have the legal relation of parent and child and have all the rights and duties of that relationship including the right of inheritance and succession from or through each other and the kindred of the adoptive parent; and (2) the adoptee is the child, heir, or issue of the adoptive parent for the purposes of interpretation or construction of a donative disposition in any instrument, whether executed before or after an adoption, unless the instrument expressly states a contrary intention or excludes the adoptee by name or by classification not based on a family or parent and child relationship.".) VT. STAT. ANN. tit. 15A, § 5-102 (2012) ("The legal consequences of an adoption of an adult or emancipated minor are the same as under sections 1-103 through 1-106 of this title.".)		<u>None Found</u>
Virginia	<u>Yes</u> <i>with age and "good cause shown"</i>	<u>Yes</u> VA. CODE ANN. § 63.2-1215 (2012) ("Any child adopted under the provisions of this chapter shall, from and after the entry of the		<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
	<p><i>restrictions</i></p> <p>VA. CODE ANN. § 63.2-1243 (2012) ("A petition may be filed in circuit court by any natural person who is a resident of this Commonwealth . . . (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least one year prior to the filing of the petition for adoption."</p> <p>Same-sex couples seeking to use adult adoption to create inheritance rights would need to satisfy the good cause and age requirements of subsection (iv).</p>	<p>interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock.").</p> <p>VA. CODE ANN. § 63.2-1243 (2012) ("Any interlocutory or final order issued in any case under this section [entitled "Adoption of certain persons eighteen years of age or over"] shall have the same effect as other orders issued under this chapter; and in any such case the word 'child' in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section.").</p>		
Washington	<p><u>Yes</u></p> <p>WASH. REV. CODE § 26.33.140(1) (2013) ("(1) Any person may be adopted, regardless of his or her age or residence.").</p>	<p><u>Yes</u></p> <p>WASH. REV. CODE § 26.33.260 (2013) ("(1) The entry of a decree of adoption divests any parent or alleged father who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations in respect to the adoptee, except</p>	<p><u>None Found</u></p> <p>[<i>Note:</i> No case discusses adult adoption in the context of the modern statutory scheme.]</p>	

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
		past-due child support obligations. The adoptee shall be free from all legal obligations of obedience and maintenance in respect to the parent. The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a natural child of the adoptive parent."").		
West Virginia	<u>Yes</u> W. VA. CODE § 48-22-801 (2013) ("Any adult person who is a resident of West Virginia may petition the circuit court or any other court of record having jurisdiction of adoption proceedings for permission to adopt one who has reached the age of eighteen years or over, and, if desired, to change the name of such person. The consent of the person to be adopted shall be the only consent necessary."").	<u>Yes</u> W. VA. CODE § 48-22-801 (2013) ("The order of adoption shall create the same relationship between the adopting parent or parents and the person adopted and the same rights of inheritance as in the case of an adopted minor child.""). [Note: The following section addresses the inheritance rights of child adoptees.] W. VA. CODE § 48-22-703 (2013) ("(a) . . . From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or		<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
		parents. (b) For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents").		
Wisconsin	<u>Yes</u> WIS. STAT. § 882.01 (2012) ("An adult may be adopted by any other adult, who is a resident of this state.").	<u>Yes</u> <i>but with some prerequisites</i> In order for "a legally adopted person [to be] treated as a birth child of the persons [sic] adoptive parents and the adoptive parents [to be] treated as the birth parents of the adopted person for purposes of transfers at death to, through, and from the adopted person and for purposes of any statute or other rule conferring rights upon children, issue, or relatives in connection with the law of intestate succession or governing instruments," one of the following must be true: (1) "The decedent or transferor is the adoptive parent or adopted child"; (2) "The adopted person was a minor at the time of adoption"; or (3) "The adoptive		<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
		<p>parent raised the adopted person in a parent-like relationship beginning on or before the child['s] 15th birthday and lasting for a substantial period or until adulthood." WIS. STAT. § 854.20 (2012).</p> <p>WIS. STAT. § 882.04 (2012) ("After a hearing on the petition, which may be held in chambers and which shall be attended by the petitioner and the adult to be adopted, unless the court orders otherwise, and after such investigation as the court considers advisable, if the court finds that it is to the best interests of the persons involved, <i>an order of adoption may be granted which shall have the same legal consequences as an order of adoption of a minor under ch. 48.</i>"). Thus, per § 854.20, an adult adoptee may inherit from her adoptive parents as though she were their natural child.</p>		
Wyoming	<u>Yes</u> WYO. STAT. ANN. § 1-22-102 (2012) ("(b) Any adult may be adopted, regardless of his residence within or outside of this state at the time the petition is filed, provided: (i) The adopting parent was a stepparent,	<u>Possible</u> WYO. STAT. ANN. § 1-22-114 (2012) ("(b) Adopted persons may assume the surname of the adoptive parent. They are entitled to the same rights of person and property as children and heirs at law of the persons who adopted them."). <i>See also</i> WYO. STAT. ANN. § 2-4-107 (2012) ("If for purposes of intestate succession, a relationship of parent and child shall be	<u>Sanderson v. Bathrick</u>, 76 P.3d 1236, 1242 (Wyo. 2003) (noting in case not involving adult adoptee that the Court had previously declined opportunity to address general issue of adult adoption).	<u>None Found</u>

STATE	ADULT ADOPTION PERMITTED? <i>Effectively No:</i> Statute either (1) requires that the adult adoptee be disabled or be related to the prospective adoptive parent, or (2) otherwise provides for requirements that make adult adoption unwieldy as a device to create inheritance rights.	POSITIVE STATUTORY TREATMENT OF ADULT ADOPTEES' INHERITANCE RIGHTS? <i>Possible:</i> Statute addresses adoptees' inheritance rights in a way that would permit courts to treat adult and child adoptees alike for inheritance purposes. <i>Yes:</i> Statute explicitly provides or strongly suggests that child and adult adoptees are to be treated alike for inheritance purposes.	RELEVANT CASE LAW <i>*Blank*:</i> State provides clear statutory answer regarding inheritance rights of adult adoptees by either effectively forbidding adoption for inheritance purposes or providing for adult and child adoptees to be accorded the same inheritance rights. <i>None Found:</i> Although statute provides room for judicial interpretation as to whether adult adoptees are to be treated in the same way as child adoptees for inheritance purposes, no case law was found.	PENDING LEGISLATION <i>None Found:</i> No pending legislation according to Shepard's Report. <i>None Relevant:</i> Legislation pending according to Shepard's Report but irrelevant for purposes of this survey.
	grandparent or other blood relative, foster parent or legal guardian who participated in the raising of the adult when the adult was a child . . .").	established to determine succession by, through or from a person: (i) An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only.").		

VI. Marital Agreements

A. Marital Agreements

1. Overview: The U.K., France and the U.S. represent three different but typical legal and societal approaches to the ability of parties contractually to regulate their marriages: broadly speaking (i) seldom, (ii) most of the time and (iii) some of the time, respectively.

2. United Kingdom: In the U.K., premarital agreements have historically been unenforceable. While they continue to remain unenforceable in most instances, they have become enforceable in some instances (See Radmacher v Granatino [2010] UKSC 42), and the courts in appropriate circumstances are beginning to look at prenuptial agreements as a guide how to exercise their inherent discretion – including whether or not to assume jurisdiction over an international marriage in the first instance. Trusts are largely disregarded in resolving issues of support, maintenance and property settlements, and trusts created within three years of marriage may be assumed to be fraudulent in this regard.

3. France: In France, couples have the opportunity to select the type of separate or community property regime that will regulate their marriage. Separate property is the best for divorce, but may leave no flexibility in terms of tax planning at death. Community property, which is the default regime, will result in an even division of property upon both divorce and death. Electing universal community property affords complete tax protection upon death but requires that all of one's property go to one's spouse upon divorce. Parties may change regimes during marriage, but only with court approval. Divorce itself must be decided by the courts.

4. United States: In the U.S., prenuptial and postnuptial agreements are commonly used and generally enforceable. There is no requirement that the spouses be separately represented, although separate representation will bolster an agreement against subsequent challenge. The extent to which asset disclosure is required for a prenuptial agreement varies widely from state to state, although virtually all states require asset disclosure for postnuptial agreements. Agreements generally need not be witnessed and need only be signed and in writing – although agreements between nonmarried couples may be oral and even implied. Agreements may provide for property settlement, may provide reasonable limitations upon spousal support, and may provide or waive testamentary obligations; they may not, however, fix child support.

VII. Inheritance Rules

A. Inheritance Disputes

1. Overview: The U.K., France and the U.S. represent three different but typical legal and societal approaches to the ability of parties contractually to regulate inheritance rights: broadly speaking (i) some of the time, (ii) seldom and (iii) most of the time, respectively

2. United Kingdom: In the U.K., family dependency and inheritance laws permit the rewriting of a will that fails to provide for the reasonable support of a testator's spouse and minor children. Indeed in the case of a surviving spouse, the test is gravitating from that of "needs" to one of "fairness."

3. France: In France, holographic wills are valid but readily subject to contest, whereas wills executed before notaries are much harder to contest. A spouse's entitlement is typically dictated by the marital regime, and one cannot disinherit one's children with respect to one's disposable property.

4. United States: In the U.S., only Louisiana has forced heirship. A spouse's testamentary share is usually a fixed percentage, without reference to actual support needs. Both the percentage and the asset base against which the spousal share applies varies from state to state and can be an intestate share in the absence of a will or an elective share against a will (which may or may not be avoidable through testamentary substitutes and may or may not be able to be satisfied with a trust), as contrasted with community property or equitable distribution upon divorce. A will can typically be contested only on the grounds of (i) improper execution; (ii) lack of testamentary capacity and (iii) fraud, mistake or duress (e.g., undue influence). Agreements, however (such as prenuptial agreements, separation agreements, and even shareholder and partnership agreements) supersede wills. In terrorem clauses are effective in many states, but never to defeat an elective share.

VIII. Use of Trusts in United States

A. In fraud of marital rights – strong policy

B. Before marriage

1. Third party trusts
 - a. Generally inviolate
 - b. But see PTC's – Alvarez v. Correa
2. Self-settled trusts
 - a. Generally no good
 - b. Asset protection trust state?

C. During marriage

1. New York – majority rule - not marital
2. Connecticut – minority rule – marital
3. Valid estate planning - not marital

IX. COMMUNITY PROPERTY ISSUES IN NON-COMMUNITY PROPERTY STATES OF THE UNITED STATES

1. Introduction

1.1 Societal Mobility

People are becoming increasingly peripatetic in today's mobile society. Sometimes people from different countries marry. Sometimes couples change domiciles. Sometimes individuals have property in more than one country. And sometimes individuals have close family members, even spouses, who live in different countries. In all of these instances, it is important to consider the issues presented when an individual from a community property jurisdiction has connections to a common law (i.e. separate) property jurisdiction. This paper will examine such considerations from the perspective of the common law states of the United States. For whatever reasons, the majority of United States case law involving foreign community property issues in common law states emanates from New York.

1.2 Tax Considerations

The tax attributes of community property, both from an income tax and a transfer tax standpoint, have some important distinctions. This paper will examine such distinctions and attempt to assess the relative pros and cons of each.

1.3 Non-Tax Considerations

Similarly, the non-tax attributes of community property vary considerably from those of common law property, particularly with respect to questions of relative rights and obligations, management and control, and disposition. This paper will examine such distinctions and attempt to assess the relative pros and cons of each.

2. Community Property in the United States

2.1 Community and Marital Property States

There are 10 states in the United States that have community or marital property regimes.

(a) Community Property

Eight states have community property regimes that are derived from Spanish and French law:

- (i) Arizona
- (ii) California
- (iii) Idaho
- (iv) Louisiana
- (v) Nevada
- (vi) New Mexico
- (vii) Texas
- (viii) Washington

(b) Marital Property

One state, Wisconsin, has adopted the Uniform Marital Property Act, which is based upon community property principles and is considered community property for United States taxation purposes.

(c) Elective Community Property

One state, Alaska, has adopted an elective community property system²⁷⁸. It is available to married residents of Alaska, both of whom live in Alaska, and to non-resident spouses who transfer property to an Alaska community property trust. To be an Alaska trust, at least one trustee must be a resident of Alaska.

(d) Others

The territory of Puerto Rico has a community property regime as well. It is interesting to note that a larger percentage of Americans live in community property regimes, and therefore are accustomed to dealing with issues relating to community property, than there are community property states. The country's two most populous states, California and Texas, both community property states, account alone for approximately 20% of the country's population

2.2 Common Law States

The remaining 40 states of the United States, plus the District of Columbia and the remaining territories, do not have community property regimes, since their property laws originate from the United Kingdom. Most of the southern tier states had community property regimes at one time or another, however, and during the 1940's, Hawaii, Michigan, Nebraska, Oklahoma, Oregon and Pennsylvania enacted community property legislation that was subsequently repealed or declared unconstitutional. As a consequence, the case and statutory law of each such state reflects a different experience with the presence of property in its jurisdiction derived from community property origins.

2.3 Foreign Community Property Regimes

(a) Universal Community

Under this regime, the community applies to all the couples' assets, both those brought into the marriage and those acquired thereafter.

(b) Community of After-Acquired Property

Under this regime, the community applies only to assets that are acquired during marriage. Gifts and inheritances during marriage may be exempt.

²⁷⁸ ALASKA STAT. §§ 34.77.010-33.77.995 (2012).

(c) Community upon Dissolution

Under this regime, the community does not crystallize until the marriage ends by death or divorce.

2.4 Rebuttable Presumptions

(a) Case Law

Property brought to a common law jurisdiction from a community property jurisdiction is generally presumed to be community property unless:

- (i) There is an enforceable agreement to the contrary;
- (ii) the property was brought into the marriage by one of the spouses;
- (iii) the property was given to one of the spouses;
- (iv) the property was inherited by one of the spouses; or
- (v) the property had been separate prior to the couple's becoming domiciled in the preceding community property jurisdiction.²⁷⁹

(b) Uniform Disposition of Community Property Rights at Death Act

Fourteen states have adopted the Uniform Disposition of Community Property Rights at Death Act.²⁸⁰ It is important to note that this statute creates a rebuttable presumption as to death time transfers. It does not address:

- (i) rights of ownership;
- (ii) rights and duties of management and control;
- (iii) rights to make gifts;
- (iv) rights to income during marriage;
- (v) rights to appreciation during marriage; or
- (vi) rights upon divorce.

(c) Restatement (Second) of Conflict of Laws

²⁷⁹ See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 259 (1971).

²⁸⁰ *Guide to Uniform and Model Acts*, UNIF. LAW COMM'N 34 (2011), http://www.uniformlaws.org/Shared/Publications/GUMA_2011web.pdf.

Under the Restatement (Second) of Conflict of Laws § 259 (1971), when a couple or a spouse acquires an asset, the fact that the couple or spouse moves to another state does not affect the character of the property. The principles articulated in this section, and the comments thereto, have generally been upheld by courts in common law states in order to protect a spouse's community property interests.

(d) Uniform Probate Code

Under the Uniform Probate Code, individuals may choose the law of a state other than their domicile to control disposition of property at death.²⁸¹ Other states have comparable provisions as well.

(e) Federal Statutes

Certain Federal statutes likely preempt what would otherwise be the state treatment of certain assets, such as qualified retirement plans. It will be important to ascertain whether any Federal laws are applicable to any assets.

- (i) ERISA
- (ii) Copyright
- (iii) Bankruptcy

2.5 Jurisdiction

- (a) Generally, the situs of the property determines which law controls real and tangible property, and the testator's domicile (at the time of his death) determines which laws control personal property.
- (b) Courts often defer to foreign courts in matters concerning foreign real property, mindful that the domestic court is unable to affect title to the such property located abroad.²⁸²
- (c) However, estate planners should be mindful of the possibility of renvoi²⁸³.

²⁸¹ The Uniform Probate Code has been adopted in 16 states: Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. Two states, Michigan and Pennsylvania, have enacted substantially similar codes. *Id.* at 35.

²⁸² *In re Estate of Warburg*, 38 Misc. 2d 997 (N.Y. Sur. 1963) (holding the question of validity of a devise of German real property was to be determined by the laws of the property's situs).

²⁸³ Single-Reference Renvoi (New York approach): The court first looks to the choice of law of the foreign jurisdiction to which it is directed by its own conflicts rule, as well as by the foreign jurisdiction's local law. For example, in determining the validity of a testamentary disposition of Swiss real property by a New York domiciliary, New York first looked to the Swiss choice of law provisions, which determined that Swiss law looks to the domicile of the testator at the time of his death (here, New York) to determine which law to apply. Accordingly, New York applied its own laws to dispose of the Swiss property, as the testator was domiciled in New York at the time of his death. *See, e.g., In re Schneider*, 198 Misc. 1017 (N.Y. Sur. 1950).

3. Considerations When Marital Domicile is Changed

- 3.1 Most states recognize the general rule that property moved from a community property jurisdiction to a common law state retains its character as community property following a change in the marital domicile.²⁸⁴
- 3.2 Recognizing the need to protect the interests of spouses who moved from a community property jurisdiction to a common law jurisdiction, at least 14 states²⁸⁵, including New York²⁸⁶, have adopted the Uniform Disposition of Community Property Rights at Death Act. The Act is limited to defining the marital rights of a surviving spouse at the death of the other spouse concerning (1) real property located in the enacting common law state and (2) personal property (wherever situated) of a person domiciled in the common law state. The Act also creates a rebuttable presumption that property acquired while married and domiciled in a community property jurisdiction is considered community property and reciprocally for common law property.²⁸⁷ Substantial evidence is generally needed to rebut this presumption. By its terms, the Act applies to property brought to a state from any other jurisdiction, not just from another state.
- 3.3 Rules vary dramatically from country to country with respect to which law regulates the community when couples change their marital domicile, such as place of celebration, place of initial marital domicile and place of current marital domicile.

4. Considerations When Marital Domicile is Not Changed

- 4.1 If the married couple maintains their community property domicile but transfers their community property to a common law jurisdiction, the common law state may apply the community property law of the domicile or the law of the

²⁸⁴ *In re Estate of Majot*, 199 N.Y. 29, 92 N.E. 402 (1910) (dictum) (reasoning where a couple relocated from France to New York bringing CP with them, their ownership therein would not change nor would their rights upon death be affected); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 259 (1971); ROBERT C. LAWRENCE, *International Tax and Estate Planning: A Practical Guide for Multinational Investors* § 4:4.2 (3d ed. 2010).

²⁸⁵ States that have adopted the Uniform Disposition Act include Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Kentucky, Michigan, Montana, New York, North Carolina, Oregon, Virginia and Wyoming. UNIF. LAW COMM'N, *supra* note 3.

²⁸⁶ N.Y. EST. POWERS & TRUSTS LAW § 6-6.1-6-6.7 (McKinney 1981). *See also In re Estate of Bach*, 145 Misc. 2d 945 (N.Y. Sur. 1989) (granting widow a one-half share in CP pursuant to Bolivian law, only applying the provision of the decedent's will (which provided for a smaller share in trust) on the remaining one-half of the estate).

²⁸⁷ Lawrence, *supra* note 7 at § 4:4.2.

property's situs, depending in part upon whether third party interests are involved, and whether the couple expressed their intention as to their choice of law.²⁸⁸

- 4.2 In more recent cases, New York courts have used a balancing approach (rather than simply looking to the individual's domicile) when dealing with choice of law issues of foreign and sister-community property states.²⁸⁹

5. Exchange of Property

- 5.1 Both the Restatement and the Uniform Disposition of Community Property Rights at Death Act contemplate that community property may be exchanged for other property. The question is whether the character of the community property is transferred to the property received upon such transaction.
- 5.2 The Uniform Disposition of Community Property Rights at Death Act takes an especially liberal approach to asset tracing and generally considers that the property received in exchanged for community property retains its character as community property.
- 5.3 The Restatement takes a more qualified approach, reasoning that although it generally recognizes the continuity of the marital interest, such interest "may be affected by dealings" in the common law jurisdiction, particularly where a third person creditor or transferee is involved.²⁹⁰

6. Choice of Law

- 6.1 Determining which jurisdiction's law should apply is a two-step process: (1) characterizing the property interest and (2) choosing the appropriate law to apply. The forum would then determine which jurisdiction has the most significant relationship to the given the particulars of the situation. In making this analysis, the following are important factors to be considered:

(a) the needs of the interstate and international systems;

²⁸⁸ See, e.g., *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637 (1965) (holding New York law, and not Spanish community property law, governs money transferred by Spanish domiciliaries (in derogation of Spanish community property laws that void such transfers) to a New York bank as joint tenants, citing New York's public policy concerns to protect the integrity of foreign investments, physical presence in New York, and the parties intentions as controlling reasons).

²⁸⁹ See, e.g., *In re Crichton's Estate*, 20 N.Y.2d 124, 228 N.E.2d 799 (1967); *Watts v. Swiss Bank Corp.*, 27 N.Y.2d 270, 265 N.E.2d 739 (1970).

²⁹⁰ The New York version of the Uniform Disposition of Community Rights at Death Act codified this feature of the Restatement considering third-party interests in exchange for community property. EPTL § 6-6.1-6-6.7.

- (b) relevant policies of the forum;
- (c) relevant policies of the interested state or countries and the relative interest of those places in the particular issue;
- (d) protection of justified expectations;
- (e) basic policies underlying the particular field of law;
- (f) predictability and uniformity of result; and
- (g) ease in the application and determination of the law.²⁹¹

6.2 Many foreign civil law countries do not make the distinction between what Americans call “real” and “personal” property-- the distinction is made between “immovable” and “moveable” property. Though similar to the American concept of personal and real property, the category of moveable property generally includes all forms of assets other than those which are closely related to real property (i.e. leaseholds and mortgages); these are classified as immovable property.²⁹²

6.3 In a case where a U.S. citizen holds mortgages securing French real property, which law governs a testamentary disposition of these French mortgages, those of France or of the U.S. jurisdiction? Although typically classified as personal property in a common law jurisdiction, French law considers mortgages immovable property, and therefore, French law would govern the disposition.

6.4 Wills

- (a) Forced heirship, which is often closely allied with community property, has been an active area for litigation since testators often attempt to circumvent the restriction. A domestic court that assumes jurisdiction over a will of a decedent involving such an issue, must decide whether to recognize those rights; this decision will likely turn on the court’s view of forced heirship, public policy of the forum and its own conflict of laws provision. However, transfers with the primary intent of frustrating foreign laws, without more, do not influence the court to apply the domestic laws. New York has adopted a comprehensive statute to direct the choice of law in this field and its courts have had opportunity to interpret the present conflicts of law statute by case law.²⁹³ The cases

²⁹¹ RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1971).

²⁹² Michael W. Galligan, *Ten Important Points to Remember About International Estate Planning*, 16 INT’L L. PRACTICUM 53, 62 (2003).

²⁹³ EPTL § 3-5.1 (allowing a non-New York decedent to opt for application of New York law to testamentary dispositions); *In re Renard*, 437 N.Y.S.2d 860, 108 Misc.2d 31 (Sur. 1981), *aff’d* 447 N.Y.S.2d 573 (App. Div. 1981), *aff’d* 439 N.E.2d 341 (N.Y. 1982) (honoring statutorily authorized choice-of-law provisions). The decedent in *Renard*, a U.S. citizen who retired to France after 30 years in New York, left substantial assets in New York. Her son, who held dual U.S.-French citizenship, sought to recover a forced share under French law, arguing that France was his mother’s domicile at the time of her death. The son received a small bequest with

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involving the application of forced heirship should be instructive in determining how courts in common law states would deal with enforcing foreign community property rights.

- (b) Generally, a Will is to be probated in the decedent's domicile but it may be probated in any jurisdiction where the decedent left property.²⁹⁴ However, with fewer in-state contacts, courts will generally decline jurisdiction over the Will²⁹⁵ and will usually deny original probate to a non-resident's Will where the Will has already been admitted to probate in the testator's domicile (but will allow ancillary probate).²⁹⁶
- (c) In New York, admitting a will for original probate is a rule of ad hoc discretion and where the facts are convincing enough, the court will entertain jurisdiction. New York will generally accept jurisdiction of a foreign domiciliary's will that operates to dispose of significant New York situs property, particularly where the will is executed in New York, and explicitly directs that New York law apply to its probate.²⁹⁷ Other factors

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the majority of the estate divided between the decedent's French friend and a charity. The court held that decedent had sufficient contacts with New York and the court would follow direction in the will to apply New York law. *But see Swiss Bank Corp.*, 27 N.Y.2d 270 (New York courts honoring a foreign judgment in favor of a forced heir that was decided prior to any determination of the issue in New York). The decedent in *Watts*, an Italian citizen who was domiciled in France, had a joint bank account in New York with his second wife, an American citizen domiciled in France. Litigation was started first in France by the decedent's daughter from his first marriage and later in New York by the decedent's widow. The issue was decided in France in favor of the decedent's daughter before any New York court decided the case on the merits. The Court of Appeals in New York upheld the French verdict in New York on the basis of res judicata. *Watts*, a case prior to *Renard* which was not followed by the later court, can therefore be distinguished from *Renard* based on the fact that it is solely as res judicata case and does not make any determinations regarding conflicts of laws.

²⁹⁴ See, e.g., *In re Chopitea's Estate*, 35 Misc. 2d 248 (N.Y. Sur. 1962) (Peruvian domiciliary directed New York as place of probate, left assets in the State and named a New York beneficiary and executor); *Montgomery v. Nat'l Sav. & Trust Co.*, 356 F.2d 806 (D.C. Cir. 1966) (D.C. court probated will of an Italian domiciliary that disposed of securities located in D.C.).

²⁹⁵ *In re Brunner's Estate*, 72 Misc. 2d 826 (N.Y. Sur. 1973) (denying jurisdiction involving the New York will of a French domiciliary who had most of his assets in France and only a small bank account in New York).

²⁹⁶ Section 1605 of the Surrogate's Court Procedure Act allows original probate if ancillary probate would be unduly inconvenient, expensive, or impossible under the circumstances; if the laws of the decedent's domicile discriminate against a New York domiciliary; or if the testator explicitly directs probate in New York. N.Y. SUR. CT. PROC. ACT § 1605 (McKinney 2012).

²⁹⁷ *Estate of Renard*, 100 Misc. 2d 347 (N.Y. Sur. 1979) *aff'd sub nom. Will of Renard*, 71 A.D. 2d 554 (N.Y. App. Div. 1979) (retaining jurisdiction of the New York will of a French domiciliary which directed that New York law govern probate, reasoning that although the will was already admitted to probate in France, there where substantial assets in New York, the executors were in New York, opposing the forced heirship claim of the decedent's son in France would prove burdensome for the interested legatees and the proceeding was brought in good faith without the intent to thwart French law). See also *In re Will of Heller-Baghero*, 26 N.Y.2d 337, 258 N.E.2d 717 (1970) (holding in a case involving an Austrian domiciliary who died leaving a 1962 and a 1964 will each offered for probate in Austria and New York, respectively, that because the issue of validity of the 1964 will was not foreclosed in Austria, 90% of assets were in New York, the executor and two legatees were New Yorkers and proceeding was brought in good faith not to thwart Austrian laws that original jurisdiction of the 1964 will in New York was proper). *But see Swiss Bank Corp.*, 27 N.Y.2d 270 (honoring a French judgment in favor of a forced heir and declining to apply substantive New York law to the estate). However,

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New York courts have considered in accepting jurisdiction include the wishes of the testator, convenience of the fiduciaries and beneficiaries, pending litigation related to the matter, and discrimination against New Yorkers.

7. Income Taxation of Community Property

- 7.1 *In Poe v. Seaborn*,²⁹⁸ the U.S. Supreme Court held that if a community property jurisdiction provides that each spouse is the owner of an undivided one-half interest in the couples' community property, then each spouse is subject to U.S. federal income tax on 50% of the community income. The determination of a spouse's interest in property during marriage is generally determined by the law of the marital domicile.²⁹⁹
- 7.2 IRC § 879 generally overrules Poe to the extent of the following special allocation rules:
- (a) Earned income is taxed as the separate income of the spouse performing the services by which it is earned.
 - (b) Community income from a trade or business (other than a partnership) and the related deductions are treated as the separate income and deductions of the spouse carrying on the trade or business (and if jointly operated, on the basis of their respective distributive shares).
 - (c) A distributive share of partnership income or loss, if it is community property, is the income or loss of the spouse who is the partner.
 - (d) Community income from separate property (other than partnerships, trade or business assets), as determined under the applicable community property law, is taxed to the spouse owning the property.

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Watts can be distinguished from *Renard* and *Heller-Baghero* because *Watts* was decided based on res judicata principles alone, and not based on probate principles.

²⁹⁸ *Poe v. Seaborn*, 282 US 101 (1930).

²⁹⁹ See *Angerhufer v. Comm'r*, 87 T.C. 814, 819 (1986); *Westerdahl v. Comm'r*, 82 T.C. 83, 86 (1984); *Hall v. Comm'r*, 37 T.C.M. (CCH) 1500 (T.C. 1978); *Rosenkranz v. Comm'r*, 65 T.C. 993, 996 (1976); I.R.S. Priv. Ltr. Rul. 91-04-001 (Jan. 25, 1991). See also Treas. Reg. § 1.879-1(a)(1) (2012). However, "Congress recognized that the rule of *Poe v. Seaborn* could cause hardship for taxpayers in community property states. Congress thus amended the Internal Revenue Code to provide that under certain conditions, the community property laws would be disregarded in determining certain types of income for federal income tax purposes. In particular, §§ 66 and 879(a) overrule *Poe v. Seaborn*, in part, generally by taxing income to the spouse who earned, managed or controlled such income. The requirements of these sections, however, can be difficult to meet and they do not apply in many situations." I.R.S. Notice 96-19, 1996-14 I.R.B. 28, 1996-1 C.B. 371, 1996 WL 121250.

(e) All other community income is split between the spouses under the applicable community property laws.

- 7.3 The spouse who is a U.S. person, to the extent he or she recognizes income under IRC § 879, must be mindful of the CFC ("controlled foreign corporation") and PFIC ("passive foreign investment company") rules.

8. Transfer Taxation of Community Property

- 8.1 In all U.S. community property jurisdictions and in many foreign civil law countries, community property vests in each spouse to the extent of one-half of such property. Accordingly, when a decedent in a community property jurisdiction dies with such property, the surviving spouse is entitled to one-half of the community property plus the decedent's separate property, both of which are included in the decedent's gross estate.
- 8.2 This in effect places a community property domiciliary at a distinct advantage when compared to his common law domiciliary counterparts, in part because of the unlimited estate marital deduction which is only available for U.S. citizens. In a case where the surviving spouse is a non U.S. citizen, common law property may be taxed on the full value of the decedent's assets owned at death, while community property decedent's estates are taxed are only one-half of such property.³⁰⁰ Furthermore, upon the death of the first spouse to die, both the separate property of the decedent and the community property interests of both spouses receive a stepped up basis.³⁰¹
- 8.3 A married couple may enter into an agreement converting their community property into separate property. However, care should be taken because if divided unequally, the transaction may result in a gift to the transferee spouse of one-half of the community property. This gift is problematic where the transferee spouse is a non U.S. citizen who is ineligible for the unlimited marital deduction for gifts between spouses resulting in a gift tax liability.³⁰² Additionally, gift splitting is only available where the spouses are both U.S. citizens or U.S. domiciliaries.³⁰³
- 8.4 Where one spouse is a U.S. citizen or domiciliary, the transfer by the other spouse by gift or upon death of his or her interest in the community can result in worldwide gift or estate taxation. The same would be true with respect to U.S. situs property if neither spouse is a U.S. citizen or domiciliary.

³⁰⁰ William H. Newton, III, *International Income Tax and Estate Planning*, § 2:13 (2d ed. 2011).

³⁰¹ I.R.C. §1014(b)(6) (2010). To be eligible for this special treatment, at least one half of the community property must be includible in the estate of the first spouse to die.

³⁰² I.R.C. § 2523(i) (1997).

³⁰³ I.R.C. § 2513 (2012).

9. Agreements

9.1 Prenuptial Agreements

- (a) Many couples regulate the community property status of their assets pursuant to prenuptial agreements. The requirements vary from state to state, but by and large:
 - (i) There is no requirement that the spouses be separately represented, although separate representation will bolster an agreement against subsequent challenge.
 - (ii) The extent to which asset disclosure is required for a prenuptial agreement varies widely from state to state.
 - (iii) Agreements generally need not be witnessed and need only be signed and in writing -- although agreements between nonmarried couples may be oral and even merely implied.
 - (iv) Agreements may provide for property settlement, may provide reasonable limitations upon spousal support, and may provide or waive testamentary obligations; they may not, however, fix child support.
 - (v) Up until 1999, Texas was the only state in which parties could not agree to alter the separate or community nature of their property. Following an amendment to Texas's constitution approved in November of 1999, married couples in Texas can now agree in writing to alter the separate or community nature of their property.
- (b) Policies that impact enforceability:
 - (i) taxation of property settlements, alimony and support;
 - (ii) estate planning opportunities incident to divorce;
 - (iii) forum shopping;
 - (iv) international marriage fraud;
 - (v) international parental kidnapping;
 - (vi) subject matter jurisdiction;
 - (vii) efficacy of discovery procedures;
 - (viii) security for post-marital obligations;
 - (ix) enforceability of foreign judgments; and
 - (x) upholding secular aspects of religious law.

9.2 Postnuptial Agreements

The rules governing the validity of postnuptial agreements are generally the same as those for prenuptial agreements, except that virtually all states require asset disclosure for postnuptial agreements.

9.3 Uniform Premarital Agreement Act

The Uniform Premarital Agreement Act has been adopted in Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Kansas, Maine, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Utah, and Virginia.³⁰⁴

9.4 Community Property Agreements

Commonly, community property agreements provide that:

- (a) all or some portion of existing property is community property, subject to specific exceptions;
- (b) all or some portion of property acquired in the future is community property;
- (c) all survivorship community property vests with the surviving spouse at the death of the first spouse; and
- (d) the agreement does not apply with respect to divorce.

9.5 Consider Rights on Termination of Marriage by Death

9.6 Consider Enforceability of Marital Agreements under Foreign Law

10. Advantages of Preserving Community

10.1 Income Tax

(a) Double Basis Step-Up – Internal Revenue Code § 1014(b)(6)

Under Internal Revenue Code § 1014(b)(6), even though only the decedent's one-half interest in community property is includible in his or her gross estate for U.S. estate tax purposes, the entire community obtains a new basis. This, of course, can be a disadvantage in the event that the property has depreciated in value through the date of the decedent's death.

³⁰⁴ *Legislative Fact Sheet – Premarital Agreement Act*, UNIF. LAW COMM'N, <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Premarital%20Agreement%20Act> (last visited July 10, 2012).

10.2 Transfer Tax

(a) Bracket Equalization

Because only one-half of community property is taxable upon the death of the first spouse, it is easier to take advantage of both couples' applicable exclusion amounts and lower-than-maximum tax brackets. Of course, the same result can be achieved for joint property with right of survivorship or tenancies by the entirety through qualified disclaimers.

(b) Minority Interest Discounts

Because each spouse owns an undivided one-half interest in community property, each spouse may receive minority interest discounts for business assets, art, and other hard to value assets of which together they own a majority. This result may or may not be replicable in common law property states.

10.3 Creditor Protection

10.4 Availability for Same Sex Couples in Some States

11. Disadvantages of Preserving Community

11.1 Gifting

Gifting community property requires the consent of the other spouse.

11.2 Divorce

Community property generally governs property division upon divorce.

11.3 Transfer Tax

(a) Estate tax administration expenses, deductions and losses allocable to surviving spouse's interest in the community are not deductible.

(b) Qualifications for elections based upon adjusted gross estate may be harder to achieve, since only one-half of closely held community property business interests will be includible in the gross estate.

(c) Harder to do GRATs

12. Techniques for Preserving Community Property after Importation

12.1 Tracing Assets

One must first essentially do an accounting of a couples' assets to see what community property was imported into the common law state and how it has transmogrified.

12.2 Segregating Assets

Once an accounting has been accomplished, assets that have community property origins should be segregated in order to simplify future accounting needs.

12.3 Joint revocable trusts

The joint revocable trust is a convenient mechanism by which to keep community property segregated. The trust must actually be funded. Income during the life of the joint settlors should be community property. Upon the death of the first spouse, the trust should divide into two shares

12.4 Not retitling assets

One should take care not to retitle assets inadvertently.

12.5 Community Property Agreement

The execution of a community property agreement after the move to a common law state can clearly determine which imported assets are to retain their community property character, as well as assets which were acquired after the move under a community property regime.

13. Ethical Concerns

13.1 Joint Representation – Model Rules of Professional Conduct 1.7

One must take care that one can represent each spouse without adversely affecting the client relationship with the other spouse. This may require each spouse to consent to the joint representation after complete disclosure of any potential conflicts of interest. This can be particularly problematic in the event of divorce.

13.2 Individual Representation

This approach eliminates potential conflicts of interest, but complicates the coordination of estate planning between spouses.

13.3 Engagement Letters

An engagement letter is essential to record how the issue of potential conflicts is being treated.