

# Domestic Relations

## Lecture 05

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# Marriage – Requirement of Competency

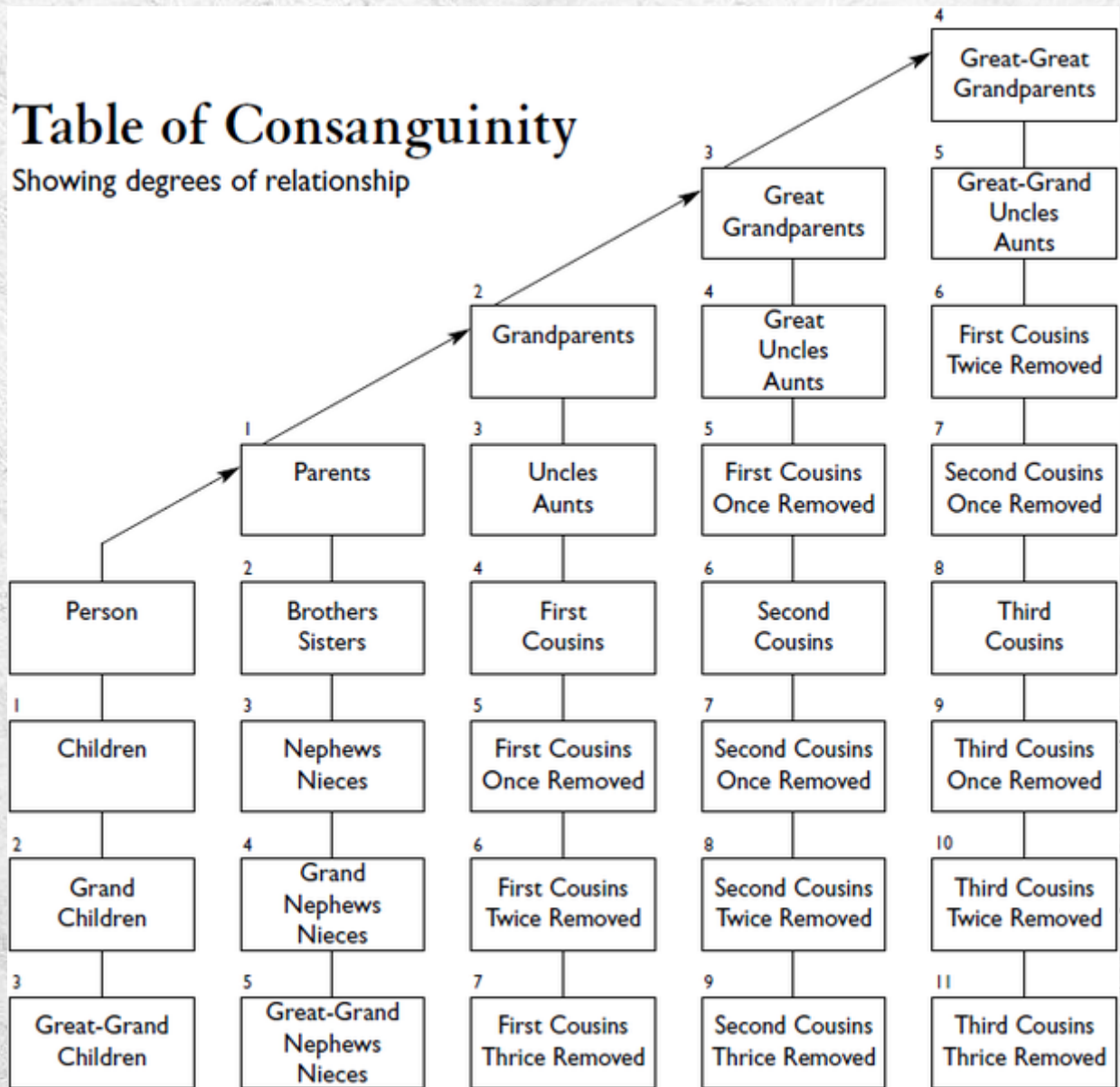
- There are various circumstances that make people ineligible to marry each other, including:
  - Too close a level of consanguinity (incest).
    - The level of relationship necessary is up to the state; half blooded relatives and relatives by adoption are usually treated in the same manner as biological relatives of full blood
  - Age; many jurisdictions require parental consent for under 18 and prohibit marriage altogether below certain ages (e.g., 15)
  - Certain venereal diseases; though this type of legislation is very much out of favor
  - Mental incapacity
    - Similar standard to incapacity with respect to contracts; a person is mentally incapacitated if he or she cannot understand or appreciate the nature and consequences of the agreement
  - Pre-existing marriage of one party (polygamy)



# Consanguinity

## Table of Consanguinity

Showing degrees of relationship





# *Moe v. Dinkins*

## 669 F.2d 67 (2<sup>nd</sup> Cir. 1982)

### • **Facts**

- A New York Domestic Relations Law provided that all male marriage license applicants between 16 and 18 and all female applicants between 14 and 18 must obtain written consent from both parents (that are living).
- Section 15.3 of the law requires women between the ages of 14 and 16 to obtain judicial approval of the marriage in addition to parental consent.
- Plaintiff Raoul Roe, 18, and Plaintiff Maria Moe, 15, had a one year old son, Plaintiff Ricardo Roe.
- Plaintiffs live together as a family unit and desire to be married to cement their family unit and remove the stigma of illegitimacy from their son.
- Maria requested consent from her widowed mother to marry Raoul, but she refused, allegedly because she wished to continue receiving welfare benefits for Maria.



***Moe v. Dinkins***  
**669 F.2d 67 (2<sup>nd</sup> Cir. 1982)**

- **Issue**

- Does the law requiring parental consent to marry deprive Plaintiffs of the liberty guaranteed them by the Due Process Clause of the Fourteenth Amendment to the Federal Constitution?





# *Moe v. Dinkins*

## 669 F.2d 67 (2<sup>nd</sup> Cir. 1982)

- **Holding**

- The law is constitutional because the State has a legitimate interest in protecting minors from immature decision making.
- Previous case law has recognized a constitutional liberty interest in marriage, but has not addressed the marriages of minors.
- The constitutional rights of children cannot be equated with adults for three reasons: a) the peculiar vulnerability of children; (b) the inability to make critical decisions in an informed and mature manner; (c) the importance of the parental role in child-rearing.
- This law should not be examined under a strict scrutiny standard, but rather it must be determined if there is a rational relationship between the means chosen and the legitimate state interests advanced.
- The parent consent requirement ensures that at least one mature person will participate in the marriage decision.



# *Moe v. Dinkins*

## 669 F.2d 67 (2<sup>nd</sup> Cir. 1982)

- **Holding**

- Because of this and minors' lack of experience, perspective, and judgment, the law is rationally related to a legitimate state interest.
- Plaintiffs also allege that the courts as a non-interested party would be in a better position to judge than parents that are potentially biased.
- However, the law assumes that parents will act in the best interests of their children.
- Plaintiffs also claim that this law should be analogized with contraception and abortion laws, and that the law denies them the means with which to legitimize their children.
- However, this ignores the fact that the law is only a postponement to the right to marry.





# Marriage – Other Requirements

- **Good faith** agreement to marry by both parties
  - A marriage that is entered into completely for an ulterior motive (such as for immigration purposes) is invalid.
- **Opposite Gender**
  - Historic rule; in some flux right now.
- **Marriage License**
  - This is a formality; but the issuing authority will try to make sure that both parties are competent, etc. before issuing the license.
- **Solemnization**
  - The parties must agree to enter the marriage relationship in front of someone who is authorized by the state to perform the ceremony. This can be a judge, a public officer or a member of the clergy who has been licensed to perform marriages.

## “Putative Marriage” Doctrine

- If a person got “married” in good faith and accidentally missed one of the requirements, that person may still be granted the protections (e.g., financial) as if the marriage were valid.





# Quick Quiz



# Conflicts between States Regarding Marriage

Different states have different rules regarding marriage. So, a question arises as to what happens when people marry in one state and then move to the other!

## U.S. Constitution “Full Faith and Credit Clause”

### Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.





# Restatement 2d of Conflict of Laws, § 283

- § 283 Validity of Marriage
  - (1) The validity of a marriage will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the marriage under the principles stated in § 6.
  - (2) A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.



# Conflicts between States Regarding Marriage

## Thus, the general rule is:

- If a marriage is valid where performed, all other states will recognize the marriage even if that marriage would not have been valid under its states laws!
- Important Exception: If recognizing this type of marriage would violate the “public policy” of the state, it need not recognize the out of state marriage.
  - Examples:
    - Marrying in another state because your state would consider the marriage incestuous.
    - Marrying in another state to avoid age or waiting periods in your state.
- What about same sex marriage from another state?
- Tune in Next Lecture!





# End Of Class Review Quiz

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**THE  
BIG  
QUIZ**



# The End

