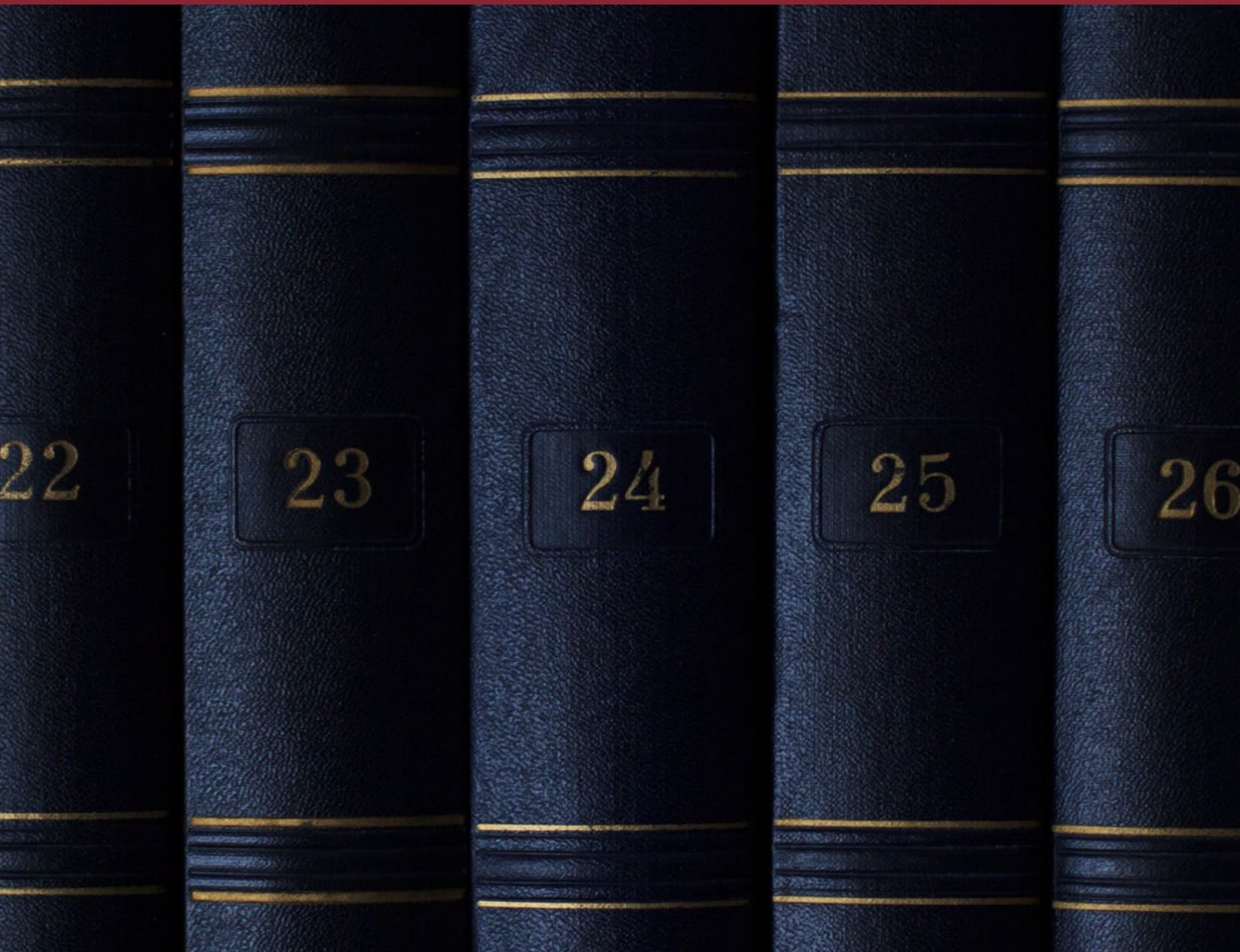




Course Outlines for the Ohio Law Component

Ohio Board of Bar Examiners

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CONSTITUTIONAL LAW

Ohio courts apply the United States Constitution as interpreted by the United States Supreme Court. In addition to the guarantees of the federal constitution, Ohio citizens also enjoy the protections of the Ohio Constitution. The Ohio Constitution provides the structure and powers of state government and serves as an independent source of rights for Ohio citizens.

I. INTERPRETING THE OHIO CONSTITUTION

A. The Ohio Constitution

1. Ohio's current version of the Ohio Constitution was enacted in its original form following a constitutional convention in 1851. That constitution replaced the 1802 Constitution that ushered Ohio into statehood.
2. The 1851 Ohio Constitution has been amended many times. The most notable series of amendments occurred in 1912, following a constitutional convention, voters adopted thirty-four proposed amendments, largely reflecting Progressive Era concerns, including municipal home rule, workers compensation, and direct-democracy measures such as the referendum and the initiative.
3. Unlike the federal constitution, every provision in the Ohio Constitution was approved directly by a vote of the people. The original 1851 Ohio Constitution was ratified by a direct vote as were all subsequent amendments.

B. A Document of Independent Force

1. Judges have a duty to "support" both the U.S. Constitution and the Ohio Constitution. See Ohio Const., art. XV, § 7.
2. "The Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993), paragraph one of the syllabus.
3. The Ohio Supreme Court may interpret the Ohio Constitution independently from the United States Constitution, and by interpreting the state Constitution independently, it ensures that citizens are not deprived of rights guaranteed to them by that document. *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 19-20.
4. At times, a right may be protected under both the federal and Ohio constitutions. In such situations, in addition to raising an argument under the federal constitution, a litigant should also raise the Ohio Constitutional argument. If a litigant fails to raise an Ohio constitutional argument in the trial court, a reviewing court may deem the argument unpreserved and not consider it in appeal. See, e.g., *State ex rel. AWMS Water Sols., L.L.C. v. Mertz*, 2026-Ohio-1487, fn.

5. The individual rights in the Ohio Constitution reflect the ratifying peoples' determination that such rights are fundamental and therefore not vulnerable to infringement by subsequent legislative, executive, or judicial state action. Constitutional rights are counter-majoritarian and often protect unpopular persons or acts.
6. In most circumstances, individuals may waive their fundamental rights conferred by the Ohio Constitution, provided the waiver is taken knowingly. For example, criminal defendants who decide to plead guilty waive their right to a trial by jury and other rights that arise during trial.

C. Lockstepping is Disfavored

1. Lockstepping is a practice whereby state courts proclaim that a state constitutional provision means the same thing as the U.S. Supreme Court has said that a provision of the U.S. Constitution means. Lockstepping begins when the court identifies an "analogous" provision of the federal constitution, which is often done with reference to the subject matter of the provision, rather than the text. The court will proceed to recite the federal interpretation of the federal provision before declaring the Ohio provision to be "coextensive" with, *see State v. Robinette*, 80 Ohio St.3d 234, 238 (1997), or "no broader than," *see Eastwood Mall, Inc. v. Slanco*, 68 Ohio St.3d 221, 223 (1994), the federal right.
2. Although, lockstepping was once common in Ohio and other states, it is disfavored today. Ohio courts "are not bound to walk in lockstep with the federal courts when it comes to our interpretation of the Ohio Constitution . . . And even if the provisions were initially understood to provide functionally the same protections, [Ohio courts] are not bound to mirror subsequent United States Supreme Court decisions delineating the scope of the protection." *State v. Smith*, 2020-Ohio-4441, ¶ 28.
3. By refusing to interpret Ohio Constitutional provisions in lockstep with similar provisions of the federal constitution, Ohio Courts provide increased protection to citizens. Citizens gain the right to the protections of two different constitutions and litigants have the opportunity to advance two sets of arguments, rather than just one.

D. The Primacy of the Text

1. In construing the state Constitution, Ohio courts "look first to the text of the document as understood in light of our history and traditions." *State v. Smith*, 2020-Ohio-4441, ¶ 29.
2. In construing constitutional text that was ratified by direct vote, Ohio courts consider how the language would have been understood by the voters who adopted the amendment. *Centerville v. Knab*, 2020-Ohio-5219, ¶ 22.
3. This means Ohio courts "afford a provision the meaning that would have been ascribed to it by a competent speaker of the English language at the time of its adoption." *State ex rel. GateHouse Media Ohio Holdings II, Inc. v. Columbus Police Dept.*, 2025-Ohio-5243, ¶ 17.
4. Because it is the Supreme Court's duty to determine and give effect to the meaning expressed in the Constitution's plain language, the first

consideration is always the provision's text. *State v. Morris*, 2026-Ohio-1519.

5. Ohio courts cannot “engage in freewheeling interpretations of our Constitution.” The constitutional text constrains courts to find its original meaning. Sometimes that text expresses broader rights than those that exist under the federal Constitution but other times it expresses narrower ones. Regardless of what a court thinks the Constitution should say, courts are bound by what it does say. *State v. Morris*, 2026-Ohio-1519.
6. Federal constitutional precedent may be persuasive if there is evidence that the relevant federal and Ohio constitutional provisions share the same original meaning and the federal precedent adheres to such meaning.

II. BILL OF RIGHTS – ARTICLE 1 OF THE OHIO CONSTITUTION

A. Equal or Greater Protection of Rights

In some situations, the Ohio Constitution may provide greater protection of individual liberties than the United States Constitution. Where a right is protected under both constitutions, “[a]s long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.” *Humphrey v. Lane*, 89 Ohio St.3d 62, 68 (2000).

B. The Bill of Rights in the Ohio Constitution – Article I

Article I of the Ohio Constitution is entitled “Bill of Rights” and consists of 22 sections. The Ohio Constitution’s Bill of Rights is in some ways similar to its federal counterpart but also includes the right to alter, reform, or abolish government; rights of conscience and education; rights for victims of crime; a prohibition of imprisonment for debt; the right to payment of damages for wrongful death; and reproductive rights. All of the sections of the Bill of Rights are described below.

Section 1. Inalienable rights

“All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”

Section 2. Right to alter, reform, or abolish government; equal protection and benefit; repeal of special privileges

Declares that all political power is inherent in the people and that government is instituted for their equal protection and benefit.

Establishes the right of the people to alter, reform, or abolish the government, whenever they may deem it necessary.

Prohibits the grant of special privileges or immunities that may not be altered, revoked, or repealed by the general assembly.

Section 3. Right to assemble and petition

Establishes the right of the people to assemble in a peaceable manner; to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

Section 4. Bearing arms; standing armies; military power

Establishes a right of the people to bear arms for their defense and security.

Prohibits standing armies in time of peace.

Establishes that the military shall be in strict subordination to the civil power.

Section 5. Trials by jury

Establishes a right to trial by jury.

Permits laws authorizing the rendering of a verdict by the concurrence of not less than three-fourths of the jury in civil cases.

Section 6. Slavery and involuntary servitude

Prohibits slavery and involuntary servitude, except as punishment of crime.

Section 7. Rights of conscience; education; the necessity of religion and knowledge

Establishes a “natural and inalienable right to worship Almighty God” according to the dictates of one’s own conscience and provides that no person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent.

Prohibits any law that gives preference to any religious society or that interferes with the rights of conscience.

Prohibits religious tests as a qualification for office.

Establishes that no person be incompetent to be a witness on account of his religious belief.

Declares religion, morality, and knowledge as being essential to good government and establishes the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Section 8. Writ of habeas corpus

Prohibits suspension of habeas corpus except for in cases of rebellion or invasion where the public safety requires suspension.

Section 9. Bail and cruel and unusual punishment

Establishes the right to bail “by sufficient sureties,” except for either of the following:

1. A person who is charged with a capital offense where the proof is evident or the presumption great;

2. A person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community per standards required to be set by the general assembly.

Where a person is charged with any offense for which the person may be incarcerated, authorizes the court to determine at any time the type, amount, and conditions of bail.

Prohibits excessive bail, excessive fines, and cruel and unusual punishment.

Requires the court, when determining the amount of bail, to consider the following factors:

1. Public safety, including the seriousness of the offense;
2. The accused's criminal record;
3. The likelihood the accused will return to court;
4. Any other factor the general assembly may prescribe.

Section 10. Trial for crimes; witnesses

Requires presentment or indictment of a grand jury (the number of which to be set by law) to hold any person to answer for a capital or otherwise infamous crime, except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary.

Establishes the following rights for all accused, in any trial:

1. To appear and defend in person and with counsel;
2. To demand the nature and cause of the accusation against him, and to have a copy thereof;
3. To meet the witnesses face to face;
4. To have compulsory process to procure the attendance of witnesses in his behalf, except that law may allow for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance cannot be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.
5. To a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

Establishes that no person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel.

Prohibits double jeopardy, even for juveniles.

Section 10a. Rights of victims of crime

Establishes certain rights for victims in criminal and juvenile, to be protected in a manner no less vigorous than the rights afforded to the accused, including the following:

1. to be treated with fairness and respect for the victim's safety, dignity and privacy;
2. upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
3. to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
4. to reasonable protection from the accused or any person acting on behalf of the accused;
5. upon request, to reasonable notice of any release or escape of the accused;
6. except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;
7. to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;
8. to proceedings free from unreasonable delay and a prompt conclusion of the case;
9. upon request, to confer with the attorney for the government; and
10. to be informed, in writing, of all rights enumerated in this section.

Section 11. Freedom of speech; of the press; of libels; of defamation

Establishes the right of every citizen to freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right.

Prohibits any law to restrain or abridge the liberty of speech, or of the press.

Requires acquittal of any party in a criminal prosecution for libel where the jury finds that the matter charged as libelous is true and was published with good motives and for justifiable ends.

Section 12. Transportation or forfeiture for crime

Prohibits the transfer of a person out of state for an offense committed within the state and provides that "no conviction shall work corruption of blood, or forfeiture of estate."

Section 13. Quartering troops

Prohibits the quartering of soldiers;

In peace time without the consent of the homeowner;

In war time except as prescribed by law.

Section 14. Search and seizure

Establishes the right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures, and that warrants shall issue only upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

This right applies to all levels of criminal charges (minor misdemeanor, misdemeanor, and felony).

Section 15. No imprisonment for debt

Prohibits imprisonment for debt in a civil action or of a civil nature, such as court costs, except in cases of fraud.

Section 16. Open courts; right to a remedy; due course of law; sovereign immunity

Establishes for every person a right to remedy by due course of law and to have justice administered without denial or delay for an injury done to land, goods, person, or reputation.

Permits suits against the state.

Establishes a presumption of public access to court proceedings.

Section 17. No hereditary privileges

Prohibits the state from granting or conferring any hereditary emoluments, honors, or privileges.

Section 18. Suspension of laws

Restricts the power to suspend laws to the General Assembly.

Section 19. Eminent domain

Establishes an inviolate right to private property that is subservient to the public welfare. When taken for public use, compensation shall be made to the owner.

1. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money.
2. In all other cases where private property are taken for public use, compensation shall first be made in money or secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Any direct encroachment upon land that subjects the land to a public use that excludes or restricts the owner's dominion and control over the land is a taking for which the owner is guaranteed a right of compensation under Section 19, Article I of the Ohio Constitution. *State ex rel. Doner v. Zody*, 2011-Ohio-6117, paragraph four of the syllabus.

Section 19a. Damages for wrongful death

Prohibits laws that limit the amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another.

Section 19b. Protect private property rights in ground water, lakes and other water courses

Recognizes and establishes protections for property interests in ground water, lakes, and watercourses, for purposes of protecting the rights of Ohio's property owners and Ohio's natural resources and for maintaining the stability of Ohio's economy.

Section 20. Powers reserved to the people

Preserves for the people all powers not delegated in the Constitution.

Section 21. Preservation of the freedom to choose health care and health care coverage

Prohibits federal, state, and local laws that:

1. Compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.
2. Prohibit the purchase or sale of health care or health insurance.
3. Impose a penalty or fine for the sale or purchase of health care or health insurance.

Section 22. The Right to Reproductive Freedom with Protections for Health and Safety

Establishes the right to make and carry out one's own reproductive decisions, including but not limited to, decisions on:

1. contraception;
2. fertility treatment;
3. continuing one's own pregnancy;
4. miscarriage care; and
5. abortion.

Prohibits the State from directly or indirectly burdening, penalizing, prohibiting, interfering with, or discriminating against an individual exercising this right or a person or entity who assist an individual in exercising this right, unless the State demonstrates that it is using the least restrictive means to advance the individual's health in accordance with widely accepted and evidence-based standards of care.

However, abortion may be prohibited after fetal viability except in situations where, in the professional judgment of the pregnant patient's treating physician, the abortion is necessary to protect the pregnant patient's life or health.

III. REGULATION OF GOVERNMENT

The Ohio Constitution establishes the three branches of state government, as well as many other subdivisions of state government and non-government entities (elections, education, political subdivisions, corporations, livestock, etc.). Much litigation under the Ohio Constitution involves whether regulated entities have complied with their constitutional obligations or exceeded the scope of their constitutional authority.

A. Broad Grants of Authority

One significant distinction between the United States and Ohio Constitutions is that the authority of a federal governmental body must be expressly granted by the U.S. Constitution. The Ohio Constitution grants broad authority to the government, so the litigated questions often focus on whether that authority was expressly limited by the statutes or ordinances enacted under the constitution's broad grant of authority. See *State ex rel. Fulton Foundry & Machine Co. v. Morse*, 101 Ohio App. 258, 262 (10th Dist.1956).

The federal Constitution is a *delegation* of powers, while the state Constitution is a *limitation* of powers. In other words, an act of Congress is not valid unless the federal Constitution authorizes it, while the General Assembly of Ohio may enact any law which is not prohibited by the Constitution. *Angell v. Toledo*, 153 Ohio St. 179, 181 (1950).

B. State Government

1. Legislative – Ohio Constitution, Article II

- a. “The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives.” Ohio Const., art. II, § 1.
- b. However, “the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote.” They also reserve the power to propose amendments to the constitution and to adopt or reject them at the polls. Ohio Const., art. II, § 1.
- c. The people may, by petition, trigger a vote to enact laws, bypassing the General Assembly. Ohio Const., art. II, § 1b.
- d. The people may, by petition, trigger a vote for approval or rejection, “of any law, section of any law or any item in any law appropriating money passed by the general assembly.” Ohio Const., art. II, § 1c.
- e. The principal role of the General Assembly is to pass laws that establish the conduct by which Ohioans conduct themselves.
- f. The Ohio Constitution forbids the General Assembly from passing any single law that contains “more than one subject.” Ohio Const., art. II, § 15(D). If the General Assembly wishes to enact laws that govern separate subjects, then it must pass separate laws.
- g. The General Assembly, through legislation commonly referred to as a “budget bill,” is responsible to apportion the State’s funds to Ohio’s many offices, agencies, departments, and other public entities as the General Assembly considers appropriate.

2. Executive – Ohio Constitution, Article III

- a. “The supreme executive power of this state shall be vested in the governor.” Ohio Const., art. III, § 5.
- b. The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, subject, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Ohio Const., art. III, § 11.
- c. The governor may appoint candidates to fill vacancies in key state offices, including judges, until the next election. Ohio Const., art. III, §§ 17a, 18; art. IV, § 13.
- d. The governor has veto power, including the ability to issue line-item vetoes. Ohio Const., art. II, § 16.
- e. Unlike the federal government, however, Ohio does not have a unitary executive. Rather, the secretary of state, auditor, treasurer and attorney general are all independently elected officeholders who exercise executive power. *Compare State ex rel. S. Monroe & Son Co. v. Baker*, 147 N.E. 501, 504 (1925), *with Trump v. Slaughter*, 609 U.S. __ (2026).
- f. The principal roles of executive officials are to execute the laws that the General Assembly enacted and to promulgate regulations and advance policies that advance the safety and prosperity of the Ohioans that they serve.

3. Judicial – Ohio Constitution, Article IV

- a. “The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.” Ohio Const., art. IV, § 1.
- b. What constitutes the judicial power within the meaning of the Ohio Constitution “is to be determined in the light of the common law and of the history of our institutions as they existed anterior to and at the time of the adoption of the constitution.” *State ex rel. Atty. Gen. v. Harmon*, 31 Ohio St. 250, 258 (1877).
- c. The “judicial power is the authority vested in some tribunal to hear and determine the rights of persons or property, or the propriety of doing an act; a power involving the exercise of judgment and discretion in the determination of questions of right in specific cases affecting the interests of persons or property as distinguished from ministerial power involving no discretion. It includes the power to interpret the Constitution and the laws and to make decrees determining controversies. Again, it has been stated that the primary functions of the judiciary are to declare what the law is and to determine the rights of parties conformably thereto.” *Stanton v. State Tax Comm.*, 114 Ohio St. 658, 671-672 (1926).
- d. “It is the right of the legislature to enact laws, and the province of the court to construe them” as necessary to resolve a live case presented by interested litigants. *The Schooner Aurora Borealis v. Dobbie*, 17 Ohio 125, 127 (1848).

- e. The Ohio Supreme Court is vested with original jurisdiction and both mandatory and discretionary appellate jurisdiction.
4. The court has original jurisdiction in cases involving writs of quo warranto, mandamus, habeas corpus, prohibition, and procedendo, in “any cause on review as may be necessary to its complete determination,” and in all “matters relating to the practice of law,” including admission and discipline. Ohio Const., art. IV, § 2(B)(1)(a)—(g).
5. The court has mandatory appellate jurisdiction in cases “originating in the courts of appeals”; cases “involving questions arising under the constitution of the United States or of this state”; “in cases on appeal from a court of appeals for a “felony on leave first obtained”; “cases in which the death penalty has been imposed”; and in administrative proceedings as provided by law. Ohio Const., art. IV, § 2(B)(2)(a)—(d).
6. The court has discretionary appellate jurisdiction in “cases of public or great general interest.” Ohio Const., art. IV, § 2(B)(2)(e). “Cases of ‘public interest’ are those ‘in which the public is interested—state, county or city, some public body,’ and cases of ‘great general interest’ are those ‘which involve questions affecting a good many people and that have aroused general interest.’” 1 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1030 (1912) (Peck).
 - a. Ohio’s judges and justices are subject to popular elections every six years and subject to mandatory retirement, unable to begin a new term after they have turned 70. Ohio Const., art. IV, § 6.
 - b. The judicial power that Ohio courts possess is limited to decided live cases presented by parties with an interest in the dispute. Courts nearly always confine their review to only the issues that the parties introduce. But courts will confirm their own subject-matter jurisdiction with or without party presentation. As a result, courts independently assess whether the parties have “standing” to assert their claims. The jurisdictional requirement of standing ensures that courts do not exceed the judicial power to resolve live cases. Standing requires a live injury, caused by the conduct complained of, that a court may redress with a favorable judgment and remedy.
 - c. Ohio’s judges and justices have the power of judicial review, that is, to declare a law enacted by the General Assembly to be in conflict with the Ohio Constitution and for that reason to be null and void. *Rutherford v. M’Faddon*, (1807), in Pollack, *Ohio Unreported Judicial Decisions Prior to 1823*, 71 (1952) (available at 2001-Ohio-56).
 - d. It is never mandatory for a court to defer to the judgment of an administrative agency and is not appropriate for a court to turn over its interpretative authority to an administrative agency. *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2022-Ohio-4677, 1142.
 - e. “The courts have no power to declare a crime; they only have power to punish crimes defined and declared by law.” *State v. Johnson*, 13 Ohio 176, 179 (1844).

- f. The courts of appeal have original jurisdiction to consider five writs: quo warranto, mandamus, habeas corpus, prohibition, and procedendo. Ohio Const., art. IV, § 3(B)(1)(a)-(e).
- g. The courts of appeal have the authority to reverse a judgment on the weight of the evidence. Ohio Const., art. IV, § 3(B)(3). Three judges must concur to reverse a jury decision on weight of the evidence. *Id.* There is no similar review provided for by the United States Constitution.
- h. The courts of appeals shall certify the record of a case to the Supreme Court for review if the judges find that their judgment is in conflict with a judgment on the same question by any other court of appeals. Ohio Const., art. IV, § 3(B)(4).

C. Local Government

1. Municipal Home Rule

- a. Municipalities are not independent sovereignties and therefore can exercise only such police power as the sovereign people of the state have in the Constitution of Ohio delegated to them, and these powers must be exercised in manner and form the Constitution provides. *Cleveland Tel. Co. v. Cleveland*, 98 Ohio St. 358, 362 (1918).
- b. Under the Home Rule Amendment to the Ohio Constitution, municipalities “have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const., art. XVIII, § 3. The first part of this grant (all powers of local self government) allows municipalities full authority to enact local laws dealing with the structure, form, and administration of local government. The second part of the grant allows municipalities to enact “local, police, sanitary and other similar regulations” but such municipal laws must not conflict with “general laws” enacted by the state legislature.
- c. To exercise their constitutional powers, “any municipality may frame and adopt or amend a charter for its government.” Ohio Const., art. XVIII, § 7.
- d. The initiative and referendum powers are reserved to the people of each municipality on all questions which municipalities may be authorized by law to control by legislative action, and such powers shall be exercised in the manner provided by law. Ohio Const., art. II, § 1f.

IV. AMENDING THE CONSTITUTION

The Ohio Constitution may be amended upon the passage of a constitutional amendment by a majority of voters in a statewide election.

- A. Either house of the General Assembly may propose amendments, and if three-fifths of the members of each house agree, the language will be placed on the ballot. Ohio Const., art. XVI, § 1.
- B. Alternatively, the people may propose an amendment to the Constitution. Ohio Const., art. II, § 1a.
- C. When two-thirds of the members of each branch of the General Assembly vote to call a constitutional convention, the question goes to the voters to decide whether to hold a convention or not. Ohio Const., art. XVI, § 2.
- D. Every 20 years, the people vote on whether to call a constitutional convention. Ohio Const., art. XVI, § 3.

OHIO FAMILY LAW

I. MARRIAGE REQUIREMENTS AND LIMITATIONS

A. Limitations on Who May Marry

1. Must be at least 18 years of age, or have permission of a juvenile court if 17 years of age and the other person to be joined in marriage is not more than four years older.
2. No living spouse.
3. No closer consanguinity than second cousins.

B. Common Law Marriage

1. Ohio prohibits common law marriages created on or after October 10, 1991.
2. Common law marriages created before that date are still valid.
3. Ohio will recognize common law marriages that were validly created under the laws of other jurisdictions that do allow common law marriages.
4. The following elements must be present to establish a valid common law marriage in Ohio:
 - a. A mutual agreement to marry by adults who are competent to marry;
 - b. Cohabitation as husband and wife;
 - c. Holding themselves out as husband and wife (representation); and
 - d. Being regarded as husband and wife in the community in which they live (reputation).

II. TERMINATION OF MARRIAGE

A. Divorce

1. A court proceeding where the trier of fact determines grounds, division of property, custody and support issues. Parties can obtain temporary custody and support orders and engage in discovery.
2. The plaintiff must have been a resident of Ohio for at least 6 months immediately before filing the complaint for divorce.
3. The action must be filed in the court of common pleas and in the proper county for commencement of action pursuant to the Ohio Rules of Civil Procedure.
4. Fault grounds for divorce include, among others, existence of a living spouse at the time of the marriage, willful absence of adverse party for one year, extreme cruelty, imprisonment, and obtaining divorce in another state.
5. No-fault grounds for divorce include the parties living separate and apart for one year and incompatibility, unless denied by either party.
6. A divorce action can be converted to a dissolution at any time prior to issuance of a final judgment and decree of divorce.

B. Dissolution

1. Requires mutual agreement of the parties, who voluntarily enter into a separation agreement which must be approved by the court to end the marriage.
2. The separation agreement must provide for division of all property of the marriage, spousal support, allocation of parental rights and responsibilities, parenting time, child support, etc. The ability of the court to modify the duration and/or amount of spousal support must be specifically stated in the agreement or it cannot be modified after the final judgment.
3. One of the parties must have been a resident of Ohio for at least 6 months immediately before filing the petition for dissolution.
4. The action must be filed in the court of common pleas and in the proper county for commencement of action pursuant to the Ohio Rules of Civil Procedure.
5. For purposes of service of process, both parties are considered defendants and subject to service of process as defendants pursuant to the Ohio Rules of Civil Procedure.
6. A dissolution must be concluded not less than 30 nor more than 90 days after filing. If the action is converted from a divorce to a dissolution, the dissolution must be concluded not more than 90 days after the conversion.

C. Annulment

1. Ordered when the court finds that the marriage was legally defective or invalid due to some impediment or defect that existed at the time of the marriage.
2. Declares a purported marriage to be void or allows disaffirmation of a voidable marriage by the party under a disability.
3. Grounds:
 - a. Nonage – by the minor or a parent/guardian before legal age is reached or ratification of the marriage;
 - b. Bigamy;
 - c. Mental capacity – by the mentally incompetent person or a guardian;
 - d. Consent to the marriage obtained fraudulently or by force; or
 - e. Nonconsummation.
4. The plaintiff must have been a resident of Ohio for at least 6 months immediately before filing the complaint for divorce.
5. The action must be filed in the court of common pleas and in the proper county for commencement of action pursuant to the Ohio Rules of Civil Procedure.

D. Legal Separation

1. The parties remain married, but a decree of legal separation can make distributive awards and determine custody and support matters, on the same grounds as a divorce.
2. Does not have a six-month residency requirement but must be in an appropriate county under the Ohio Civil Rules.

III. DIVISION OF ASSETS AND LIABILITIES

A. Marital property versus separate property

1. Marital Property is defined in R.C. 3105.171(A)(3) and includes:
 - a. Income earned during marriage;
 - b. Property acquired during marriage;
 - c. All income and appreciation on separate property due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;
 - d. Participant accounts as defined in R.C. 148.01;
 - e. Retirement benefits accrued during marriage (Ex. Deferred compensation accounts);
 - f. Appreciation is due to marital labor or funds.
2. Separate Property defined in R.C. 3105.171(A)(6) and includes:
 - a. Premarital assets;
 - b. Inheritances;
 - c. Gifts of real or personal property or of an interest in real or personal property that are made after the date of the marriage and is proven by clear and convincing evidence;
 - d. Passive income and appreciation acquired from separate property by one spouse during the marriage;
 - e. Certain personal injury proceeds (personal injury compensation exceptions exist);
 - f. Property excluded by antenuptial or postnuptial agreement;
 - g. Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under R.C. 3105.17.

The commingling of separate property with other property does not destroy its identity as separate property so long as it is traceable.

3. “During the marriage” generally means the period of time from the date of the marriage through the date of the final hearing. However, if the court determines that the use of those dates would be inequitable, it may select another date range it considers equitable in determining marital property.

4. Legal Importance of Duration of Marriage

- a. Determines:
 - i. Scope of marital property;
 - ii. Accumulation period for retirement assets;
 - iii. Appreciation calculations;
 - iv. Debt allocation.
- b. Impacts:
 - i. Spousal support analysis;
 - ii. Pension division;
 - iii. Business valuation dates.

B. Equitable Distribution

- 1. The division of marital property should be equal except where equal distribution would be inequitable. R.C. 3105.171. The court must make written findings of fact to support equitable distribution and specify the dates used for the beginning and end of the marriage for valuation purposes.
 - 2. Generally, the court shall disburse a spouse's separate property to that spouse. However, separate property may be awarded to the other spouse as a distributive award in the following situations:
 - a. To facilitate, effectuate, or supplement a division of marital property.
 - b. In lieu of a division of marital property in order to achieve equity between the spouses, if the court determined that a division of the marital property in kind or in money would be impractical or burdensome.
 - c. To remedy misconduct including if spouse failed to disclose assets.
 - d. As security for awards includes liens on property and structured payments.
- C. The court must consider statutory factors when dividing marital property and deciding whether to make, and the amount of, any distributive award (R.C. 3105.171(F)):
- 1. Duration of the Marriage;
 - a. Long-term marriages often favor broader sharing.
 - b. Short-term marriages may favor restoration of premarital status.
 - 2. Assets and liabilities of the parties. Includes total financial condition, debt obligations, and liquidity concerns;
 - 3. Desirability of awarding the family home, or the right to reside in the family home for a reasonable period of time, to the spouse with custody of the children of the marriage;
 - 4. Liquidity of property to be distributed;

5. Economic desirability of retaining intact an asset or an interest in an asset. Examples include family businesses, professional practices, and investment entities;
 6. Tax consequences of the property division upon the respective awards to be made to each spouse;
 7. Costs of sale, if necessary that an asset be sold to effectuate an equitable distribution of property;
 8. Division or disbursement of property made in a separation agreement that was voluntarily entered into by spouses includes. Includes prenuptial agreements, postnuptial agreements; and partial settlement agreements;
 9. Retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;
 10. Any other factor that the court expressly finds to be relevant and equitable. Examples include: health issues, earning disparity, economic misconduct, and dissipation of assets.
- D. Financial misconduct, such as failure to disclose property in a full and complete manner, allows the court to compensate the offended spouse with a distributive award or a greater share of marital property. A failure to disclose that is substantial and willful, even if the property at issue is separate property, may result in the offended spouse being awarded up to three times the value of the property that was not disclosed.
- E. Property division must take place before any spousal support award is made and must be made without regard to any spousal support award.
- F. A “Qualified Domestic Relations Order” is required for any award from an employer-sponsored retirement plan.
- G. Bankruptcy
1. Filing bankruptcy creates an automatic stay halting many actions against a debtor spouse.
 2. Divorce Exceptions
 - a. Certain domestic relations matters may continue:
 - i. Dissolution of marriage;
 - ii. Custody;
 - iii. Support establishment/modification.
 3. Proceedings Potentially Stayed
 - a. Property division;
 - b. Collection efforts;
 - c. Contempt actions involving debt collection;
 - d. Transfer of estate property.

- 4. Bankruptcy Treatment
 - a. Domestic support obligations are generally:
 - i. Divorce-related property settlement debts between spouses in Chapter 7.
 - ii. Priority debts.
 - b. Includes:
 - i. Spousal support;
 - ii. Child support;
 - iii. Certain attorney fee awards;
 - iv. Support-related arrearages.

IV. PARENTAL RIGHTS AND RESPONSIBILITIES

- A. In both original orders and decree modifications, the best interest of the child is the determining standard in custody matters.
- B. The court may not give preference to a parent based on that parent's financial status or condition. R.C. 3109.04(F)(3).
- C. A court shall not limit parental rights and responsibilities or limit parenting time based on the parent's decisions regarding the child's gender identity or gender transition. R.C. 3109.054.
- D. When the victim and a convicted perpetrator of rape or sexual battery are married and a child is born of the crime, the victim may obtain a declaration that the child was conceived as a result of the rape or sexual battery. Once a declaration has been obtained, the perpetrator may not be granted parental rights with respect to that child and the perpetrator's relatives may only have rights to the child with the consent of the victim. Any such order limiting the rights of the perpetrator can only be revoked upon motion of the victim. R.C. 3109.50 - 3109.507.
- E. In a custody dispute between a parent and a nonparent, custody cannot be awarded to the nonparent unless it is determined by a preponderance of the evidence that the parent is unsuitable due to abandonment, relinquishment of custody, inability to care for and support the child, or if custody would be detrimental to the child.
 - 1. The court cannot determine custody based on the best interest of the child until that threshold determination is made.
 - 2. A contractual agreement between a parent and a nonparent for custody or shared custodial rights is a binding agreement if the court finds it to be in the best interest of the child.

V. SPOUSAL SUPPORT

Spousal support is not determined by a statutory schedule, but there are about a dozen factors that courts must apply to determine the nature (money, real, or personal property, etc.), amount, terms, and duration of spousal support. These factors include: each party's:

- A. Earning ability;
- B. Age;
- C. Health;
- D. Education;
- E. Duration of the marriage;
- F. Parental responsibilities;
- G. The standard of living;
- H. Finances;
- I. Past support of the other party;
- J. Time to prepare for work;
- K. And any other factor the court finds relevant and equitable.

VI. PRENUPTIAL AND POSTNUPTIAL AGREEMENTS

- A. Valid agreements will override the statutory provisions that control the disposition of assets upon the dissolution or divorce.
- B. To be valid, the property division provisions must meet a three-part test:
 - 1. Was the agreement entered into freely, without fraud, duress, coercion, or overreaching;
 - 2. Was there a full disclosure or full knowledge and understanding of the nature, value, and extent of the prospective spouse's property; and
 - 3. Do the terms of the agreement promote or encourage divorce or profiteering by divorce?
- C. For agreements that include spousal support, a second test asks if the spousal support provision is conscionable at the time the agreement is sought to be enforced.

VII. PARENTAGE

A. Child Support

1. Child support is calculated per the statutory guidelines.
2. The minimum child support order is \$80 per month for all children subject to the order.
3. Child support obligations end when children reach the age of 18, unless:
 - a. The child continuously attends an accredited high school on a full-time basis after reaching age 18;
 - b. The parents incorporate an agreement to continue support after age 18 in a separation agreement;
 - c. A child is determined to be mentally or physically disabled and incapable of being self-sufficient.
 - i. A recent change in the law allows courts to order child support for a disabled child who is not self-supporting even after the child reaches the age of 18.
4. There are more than a dozen factors courts can consider when deviating up or down from the statutory guideline including, for example, special needs of the child, financial resources, income, benefits from remarriage or cohabiting, in-kind contributions, standard of living the child would have enjoyed, extraordinary expenses, and any other relevant factor.
5. Modification of child support orders:
 - a. Requires a substantial change in circumstances not contemplated in the original order; or if the court determines the amount calculated is unjust or inappropriate and therefore not in the best interest of the child.
 - i. A substantial change in circumstances occurs when child support as recalculated differs by ten percent than the current amount required to be paid (10% increase or decrease of current support order).
 - b. If the court finds a child's medical needs are not being met due to inadequate health insurance coverage, a change in circumstances is deemed to have occurred.
 - c. Any deviation from the child support schedule must be accompanied by a finding of fact that the deviation ordered is in the best interest of the child.

B. Paternity

1. Jurisdiction
 - a. Both the juvenile and domestic relations courts have original jurisdiction over paternity actions.
2. Domestic relations courts have original jurisdiction over paternity actions that arise from a divorce, dissolution, or legal separation case (only if paternity is directly tied to an active divorce, legal separation or dissolution).

- a. The presumption that a man is the biological father of a child is based on the factors listed below but can be rebutted by clear and convincing evidence to the contrary. Evidence of paternity may include the following:
 - i. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
 - ii. Expert opinion regarding statistical probability based on the duration of the mother's pregnancy;
 - iii. Genetic test results;
 - iv. Medical evidence concerning the alleged father's paternity of the child based on tests performed by experts.
- b. A man is presumed to be the natural father in the following circumstances:
 - i. The man and the child's mother are married or have been married to each other, and the child is either born during the marriage or within three hundred days of the marriage being terminated by death, annulment, divorce, dissolution, or separation pursuant to a separation agreement.
 - ii. The man and the child's mother attempted a solemnized marriage, in another jurisdiction that is, or could be, declared invalid and:
 01. The marriage can only be declared invalid by a court, and the child is born within three hundred days after the termination by death, annulment, divorce, or dissolution; or
 02. The attempted marriage is invalid without a court order, and the child is born within three hundred days after the termination of cohabitation.
 - iii. An acknowledgment of paternity has been filed and has not become final.
3. If a man has been identified as a potential father, the court may, and at the request of a party shall, require the child, the mother, and the potential father undergo the appropriate test.
4. Embryo donation
 - a. There is an irrebuttable presumption that a mother who gives birth to a child via embryo donation is the natural mother of that child.
 - b. If a married woman gives birth to a child through embryo donation and her husband has consented to the donation, he shall be considered the natural father of the child.
 - c. If the husband did not consent to the embryo donation, the presumption that he is the natural father may be rebutted by clear and convincing evidence.
5. Artificial Insemination
 - a. If a married woman conceives a child through artificial insemination to which her husband consented, he is conclusively presumed to be the father of that child.

6. Acknowledgment of Paternity

- a. Must be made utilizing the affidavit found in R.C. 3113.31, have notarized signatures of the natural mother and the man acknowledging he is the natural father, and must be sent to the Office of Child Support in the Department of Job and Family Services no later than ten days after it has been signed and notarized.
- b. If the acknowledgment is found to be correctly completed the information will be entered into the birth registry. When final, the acknowledgment is not a presumption but is final and enforceable.
- c. A final and enforceable acknowledgement may only be rescinded within 60 days of the latest signature on the acknowledgement and after one of the signatories requests a determination of parentage, gives the office written notice of the request for determination of parentage, and the name of the child support enforcement agency conducting the genetic tests to determine parentage.
- d. In the case of fraud, duress, or material mistake of fact, an action to rescind the acknowledgment can be brought no later than one year after the acknowledgment became final.

C. Adoptions

1. Best interest of the child is the governing principal of adoption law as it is in domestic relations law. Adoption creates a legal parent-child relationship between the adoption petitioner and the adoptee for all intents and purposes, including inheritance, regardless of whether documents regarding inheritance were executed prior to the adoption unless the document explicitly excludes an adopted person. Parties to an adoption proceeding include the petitioner, the adoptee, and any person whose consent is required but has not been obtained.
 - a. Both unmarried persons and married couples can adopt in Ohio, and no distinction is made between married persons of opposite sex or same sex.
 - b. A person consenting to adoption may do so at any time 72 hours after a child's birth. Consent to adoption is irrevocable once an interlocutory entry or final decree of adoption is entered. Consent from a minor's parents is required where:
 - i. The minor was conceived or born while the parents were married;
 - ii. The minor is the child of the parent by adoption;
 - iii. Prior to the filing of the adoption petition, a court in Ohio or another state determined a parent-child relationship exists;
 - iv. The acknowledgment of paternity has become final.
2. Exceptions to Consent
 - a. When the court finds by clear and convincing evidence that a parent has no more than de minimis contact with the child and failed to provide meaningful and regular maintenance and support as required by law or decree for one year preceding the adoption petition.

- b. The parent has voluntarily executed a permanent custody surrender agreement.
 - c. Parental rights have been terminated by a court of competent jurisdiction.
 - d. The consent of an agency having permanent custody is not required if the court finds that the agency is unreasonably withholding consent to the adoption.
 - e. Consent of a putative father is not required if the putative father has not registered with the Putative Father Registry within 15 days of the child's birth. A putative father who has registered with the Putative Father Registry is not entitled to consent if after proper notice and hearing the court finds the putative father:
 - i. Is not the minor's father;
 - ii. Has failed with justification to have more than de minimis contact with the minor or to provide meaningful and regular maintenance and support; or
 - iii. Has willfully failed to meaningfully and regularly care for and support the mother during her pregnancy and up to the earlier of the mother's surrender of the minor or the minor's placement in the petitioner's home.
 - f. Consent is not required if the child is conceived as a result of the commission of rape or sexual battery by that party and the person is convicted of or pleads guilty to the commission of that offense.
 - g. Consent is not required from any parent who pleads guilty to or is convicted of a criminal offense that led to the death of the minor's other parent, legal guardian, custodian, or primary caregiver and a term of that person's incarceration is expected to last beyond the child's age of majority.
3. Stepparent and Relative Adoptions
- a. A stepparent must be married to one of the child's legal parents. If the child is 12 years old or older, the child must consent. A finalized stepparent decree of adoption updates legal parentage and allows for changes to the child's name and birth certificate.
 - b. Relatives eligible to adopt children include grandparents, adult siblings, legal custodians, and guardians.
 - c. If the adoptee is 18 years of age or older at the time of the adoption, the adopted person and the adopted person's descendants are excluded from inheriting from an adoptive parent, unless the adopted person is expressly included.
 - d. If a parent dies without the parent-child relationship being terminated, and a spouse of the living parents subsequently adopts the child, all the child's rights from the deceased parent, including inheritance and grandparents or relatives of the deceased parent's rights to companionship, are not curtailed by the adoption.
4. Open adoption agreements are allowed under Ohio law; however, open adoption agreements are non-binding and not enforceable by courts

and do not affect the legal finality of the adoption procedure. Any agreement that violates public policy or is not in the best interest of the child is prohibited.

5. Foreign Adoptions

- a. A foreign adoption is accepted and considered final if:
 - i. The adoption decree was issued by a proper authority in a foreign country;
 - ii. The adoption complies with the laws of that country; and
 - iii. The adoptive parents submit appropriate documentation to an Ohio probate court.
- b. After recognizing a foreign adoption, the probate court has discretion to ensure that the adoption is in the best interest of the child.

OHIO JUDICIAL SYSTEM

Ohio's courts are created by the Ohio Constitution, which provides that the "judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Article IV, Section 1, of the Ohio Constitution. While these courts are established in the Ohio Constitution, the General Assembly may pass laws about the extent and exercise of that jurisdiction.

The General Assembly has the authority to create courts. Courts inferior to the Supreme Court may be established by statute. The General Assembly has established county courts and municipal courts. Although not part of the judicial branch, the General Assembly has also authorized Mayor's Courts.

The Ohio Constitution authorizes the General Assembly to confer jurisdiction on courts established by the Constitution; the General Assembly also has authority to determine the jurisdiction of the courts it has established. The General Assembly's power is limited, however, by the Supreme Court's authority to govern court administration. The Supreme Court's authority includes the establishment of rules of practice and procedure in Ohio's courts.

I. THE SUPREME COURT OF OHIO – ARTICLE IV, SECTION 1, OF THE OHIO CONSTITUTION

A. Composition of the Supreme Court

The Supreme Court is comprised of seven judges known as one Chief Justice and six associate justices. Justices are elected to serve staggered six-year terms.

B. Jurisdiction

1. Original Jurisdiction

- a. The Supreme Court of Ohio has original jurisdiction to decide writs (habeas corpus, mandamus, procedendo, prohibition, and quo warranto), and appeals from the Public Utilities Commission of Ohio. The Supreme Court also has concurrent jurisdiction with the courts of appeals over appeals from the Board of Tax Appeals.
- b. The Supreme Court of Ohio has original jurisdiction over matters involving admission to the practice of law, attorney discipline, and all matters related to the practice of law.
- c. The Supreme Court of Ohio has authority to establish rules of practice for the Supreme Court and all other Ohio courts.

2. Appellate Jurisdiction

- a. The Supreme Court of Ohio has exclusive direct appellate jurisdiction over cases in which the death penalty has been imposed.
- b. The Supreme Court of Ohio has direct appellate jurisdiction over cases that originate in the Ohio Courts of Appeals.
- c. The Supreme Court of Ohio has appellate jurisdiction in cases involving questions arising from the United States Constitution or the Ohio Constitution.

- d. The Supreme Court of Ohio has discretionary appellate jurisdiction over appeals of cases first heard by the Ohio Courts of Appeals, as well as cases certified for further appeal by any Ohio Court of Appeals.

C. Clerk of Court

1. The Supreme Court appoints a Clerk of Court.
2. The Clerk's Office manages all cases filed with the Supreme Court. It maintains the Court's case files, case dockets, journal, and lower court records. The Clerk also prepares and issues Court orders; schedules oral arguments and the Court's consideration of other case matters; and coordinates inter-agency communication in death penalty cases.

II. COURTS OF APPEALS – ARTICLE IV, SECTION 3, OF THE OHIO CONSTITUTION

A. Composition

1. Ohio's 88 counties are divided into 12 appellate districts. A map of the districts is attached at the end of this outline.
2. Each district has at least four judges.
3. Each district covers one or more counties.
4. Judges are elected to serve six-year terms.
5. Districts hear cases in panels of three, but may sit en banc.

B. Jurisdiction

1. The courts of appeals have original jurisdiction to decide writs (habeas corpus, mandamus, procedendo, prohibition, and quo warranto).
2. The courts of appeals have appellate jurisdiction to hear appeals of final and appealable orders from trial courts within their territorial jurisdiction.
3. The courts of appeals have appellate jurisdiction to hear some appeals from specific administrative agencies.
4. The Tenth District Court of Appeals has exclusive appellate jurisdiction over appeals from specific administrative agencies and from most decisions of the Court of Claims.
5. Each district has adopted local rules supplementing the general rules of appellate procedure. These local rules provide procedures to be followed in each district.

C. Clerk of Courts

1. Each county's common pleas court clerk serves as the clerk of the court of appeals for cases originating in that county.
2. In a district covering multiple counties, the common pleas court clerk for a county serves as the clerk for cases filed in that county.

3. In a multi-county district, filings must be made with the clerk in the county where the case originated. A case filed in another county in the same district is not properly before the court of appeals. *See, e.g., Brown v. Hall*, 2009-Ohio-5592, ¶ 1.

III. TRIAL COURTS

A. Composition

1. Ohio is divided into 88 courts of common pleas, one for each county. Article IV, Section 4, of the Ohio Constitution.
2. There are municipal courts with territorial jurisdiction ranging from one or more cities, villages, and townships to an entire county.
3. There are county courts in counties with territory not covered by a municipal court.
4. Judges are elected to serve six-year terms.

B. Jurisdiction

1. Courts of common pleas have jurisdiction over civil cases (with a limited exception involving county courts), and appellate jurisdiction from the decisions of the boards of county commissioners, criminal cases involving felonies, and misdemeanors if indicted with felony offenses. R.C. 2301. If an indictment charges only misdemeanors, the common pleas court may retain jurisdiction or transfer the matter to municipal court. Crim.R. 21.
 - a. Courts of common pleas may have divisions: general, domestic relations, juvenile, and probate.
 - b. In some counties, the divisions are combined to create a family court. The family courts combine resources to address family issues.
2. Municipal courts generally have jurisdiction over civil cases where the amount at issue does not exceed \$15,000, R.C. 1901.17, and in criminal cases involving misdemeanor offenses.
3. County courts have exclusive jurisdiction in civil cases when the amount at issue does not exceed \$500, when there is shared jurisdiction with the common pleas court over civil cases and the amount at issue does not exceed \$15,000, and in criminal cases involving misdemeanor offenses. R.C. 1907.02 and R.C. 1907.03.
4. Municipal and county courts must establish a small claims division. R.C. 1925.01(A). The purpose of the small claims division is to resolve minor disputes (monetary damages under \$6,000) fairly, quickly, and inexpensively.

- C. Trial courts are authorized to adopt local rules to supplement the general procedural rules.

D. Specialized dockets

1. Many trial courts have created specialized dockets.
2. Specialized dockets are reviewed and certified by the Supreme Court of Ohio.

IV. COURT OF CLAIMS

The Chief Justice of the Supreme Court of Ohio assigns judges to hear cases for the Court of Claims.

Generally only one judge presides over actions in the Court of Claims, but the Chief Justice may assign a panel of three judges to actions presenting novel or complex issues.

The Court of Claims has jurisdiction to hear and determine all civil actions filed against Ohio and its agencies. Civil complaints filed for \$2,500 or less are decided administratively by a clerk of the Court of Claims. Appeals from these administrative determinations are decided by a judge of the Court of Claims.

V. MAYOR'S COURTS (R .C. 1905)

Mayor's courts are not part of the judicial branch of Ohio. A mayor can hear cases; or may appoint a mayor's court magistrate to hear cases. Mayor's courts generally have jurisdiction over the violation of a municipal ordinance, parking violations, and moving traffic violations on a state highway located in the municipal corporation.

VI. SELECTION OF JUDGES

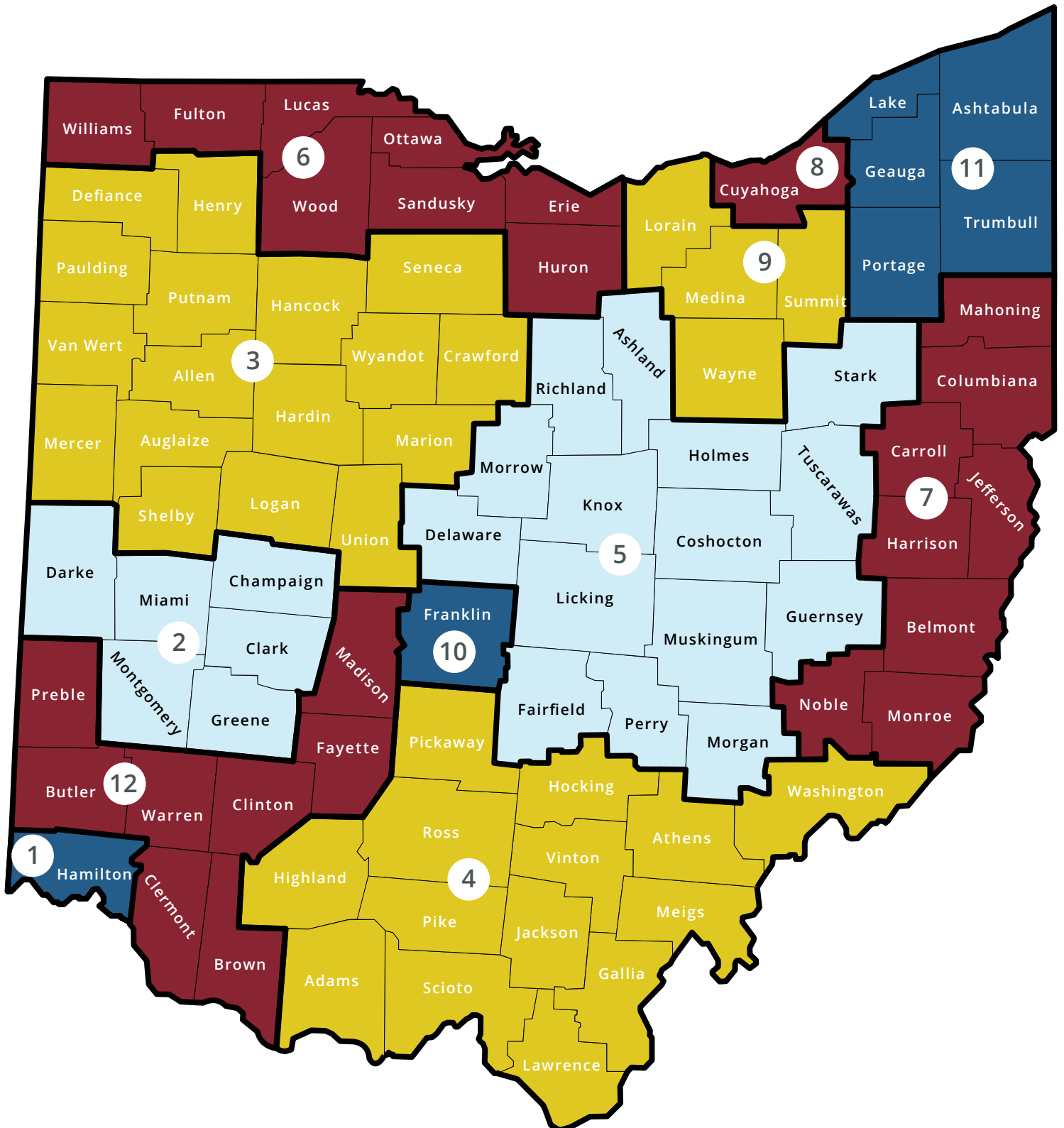
Judges for trial courts are elected in nonpartisan elections, but Supreme Court and appellate court judges are elected in partisan elections. Judges must be attorneys who have been licensed to practice law for at least six years and may not seek reelection if they would turn 70 years old before the start of the term they seek. The Governor appoints judges to fill vacancies occurring between elections.

VII. MAGISTRATES

Magistrates are not elected, they are appointed by a court or judge and operate under the supervision of that elected judge. Trial and appellate courts may appoint magistrates.

Magistrates must be attorneys who have been licensed to practice law for at least four years. Magistrates are authorized to rule on motions, preside over hearings, and regulate all proceedings as if by the court. The appointing court may refer specific cases to a magistrate or enter a general order of reference. Further rules about magistrates can be found under Rule 4.20 of the Rules of Superintendence.

Ohio Appellate Districts



OHIO LAWS AND RULES

Ohio residents are subject to Ohio state and United States federal laws. Federal laws apply in Ohio as they do across all 50 states. In addition to the United States Constitution, which is the supreme law of the United States, federal laws include statutes codified in the United States Code. Federal laws also include decisions by courts interpreting federal laws. Additionally, federal laws include regulations issued by federal administrative agencies to implement federal laws, which are codified in the Code of Federal Regulations. Two federal district courts in Ohio also issue decisions which may affect Ohio residents. These are the Northern and Southern District Courts of Ohio. The Sixth Circuit Court of Appeals holds the authority to review decisions by federal district courts in Ohio. Sometimes the United States Supreme Court may review a case appealed from the Sixth Circuit or from the Supreme Court of Ohio.

Ohio also has state laws including the Ohio Constitution, laws passed by the Ohio legislature and codified in the Ohio Revised Code, and decisions by courts interpreting Ohio laws. Additionally, the Ohio Administrative Code contains administrative regulations in multiple areas of law. These laws often are interpreted by the Supreme Court of Ohio and the 12 Ohio District Courts of Appeals.

Finally, Ohio attorneys are subject to multiple sets of rules governing the practice of law in Ohio as well as practice and procedure with Ohio courts. Most of these rules are issued by the Supreme Court of Ohio, which has exclusive jurisdiction to regulate the practice of law in Ohio.

This outline is intended to provide a brief, high-level overview of the various sources of law in Ohio as well as the sets of rules with which attorneys should be familiar.

I. UNITED STATES CONSTITUTION

The Constitution of the United States is the supreme law of the United States of America and defines the framework of the federal government. The Constitution's first three articles embody the doctrine of the separation of powers, in which the federal government is divided into three branches: the legislative branch, consisting of the bicameral Congress (Article I); the executive branch, consisting of the president (Article II); and the judicial branch, consisting of the Supreme Court and other federal courts (Article III). Articles IV, V, and VI express concepts of federalism, describing the rights and responsibilities of state governments, the states in relationship to the federal government, and the amendment process.

Since the Constitution was ratified in 1789, it has been amended 27 times, including one amendment repealing a previous one. In general, the first ten amendments, known collectively as the Bill of Rights, offer specific protections of individual liberty and justice, and place restrictions on the powers of government. The majority of the following 17 amendments expand individual civil rights protections. Others address issues related to federal authority, or modify government processes and procedures.

II. UNITED STATES CODE

The United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 53 titles, including Copyrights (Title 17), Crimes and Criminal Procedure (Title 18), Internal

Revenue Code (Title 26), Judiciary and Judicial Procedure (Title 28), Labor (Title 29), and The Public Health and Welfare (Title 42).

III. CODE OF FEDERAL REGULATIONS

Regulations promulgated by executive branch agencies through the rule-making process set out in the federal Administrative Procedure Act are published chronologically in the Federal Register and then codified in the Code of Federal Regulations.

IV. OHIO CONSTITUTION

Ohio has had three constitutions since obtaining statehood in 1803. While the current version of the Ohio Constitution dates from 1851, it was substantially modified through a series of amendments approved by voters following a constitutional convention in 1912. The revisions increased the power of the people and distributed authority more evenly among the branches of government. Although numerous later amendments have been made, the 1851 Constitution remains the basic law of the state. The Constitution contains 18 articles, including a Bill of Rights (Article I) and articles concerning the legislative (Article II), executive (Article III), and judicial (Article IV) branches of state government.

V. OHIO REVISED CODE

The Ohio Revised Code contains the general laws of Ohio enacted by the Ohio General Assembly. The Revised Code is organized into 31 general titles, including titles devoted to state government, the courts, crimes, domestic relations, among others.

Each title is broken into chapters dealing with individual topics of law. The chapters are further divided into sections containing the text of individual statutes.

VI. OHIO ADMINISTRATIVE CODE

The state agencies within Ohio adopt rules to carry out policies and the intent of laws passed by the General Assembly. The agencies promulgate rules and regulations published by the Ohio Legislative Services Commission in the Register of Ohio, which in turn are codified in the Ohio Administrative Code.

VII. OHIO RULES OF COURT

A. Rules of Practice and Procedure in Ohio Courts

1. Supreme Court of Ohio Rules of Practice

The Rules of Practice of the Supreme Court of Ohio apply to practice and procedure in cases before the Supreme Court of Ohio.

2. Ohio Rules of Appellate Procedure

The Ohio Rules of Appellate Procedure govern procedure in appeals to courts of appeals from the trial courts of record in Ohio, including the timing and method of filing such appeals and requirements for appellate briefs and motions.

3. Ohio Rules of Civil Procedure

The Ohio Rules of Civil Procedure prescribe the procedure to be followed in all Ohio courts that exercise civil jurisdiction at law or in equity.

4. Ohio Rules of Criminal Procedure

The Ohio Rules of Criminal Procedure prescribe the procedure to be followed in all Ohio courts that exercise criminal jurisdiction.

5. Ohio Rules of Evidence

The Ohio Rules of Evidence govern the proof of facts in criminal and civil proceedings. These rules determine what evidence must or must not be considered by the trier of fact in resolving the legal issues before the court.

6. Ohio Rules of Juvenile Procedure

The Ohio Rules of Juvenile Procedure prescribe the procedures to be followed in all juvenile courts of the state in all proceedings coming within the jurisdiction of such courts.

7. Ohio Traffic Rules

The Ohio Traffic Rules prescribe the procedure to be followed in all Ohio courts in traffic cases.

B. Rules of Superintendence for the Courts of Ohio

The Rules of Superintendence primarily govern the internal operation of the courts of Ohio, including courts of appeal, courts of common pleas, municipal courts, and county courts. These rules not only apply to the general court operations, but also provide guidance on statistical reporting, assignment of visiting judges, and rules for municipal and county courts. The rules are designed to ensure prompt disposition of all causes in all courts of Ohio. The Rules of Superintendence are administrative directives only and not intended to function as rules of procedure. Among other things, the Rules of Superintendence address the following matters particularly relevant to new attorneys. The Rules of Superintendence were substantially revised and renumbered effective July 1, 2026.

1. Local Rules of Court (Sup.R. 3.00-3.05)

Sup.R. 3.00 through 3.05 require courts, or divisions of courts, to file the local rules of practice it adopts with its clerk of courts and the clerk of the Supreme Court. They also require courts or divisions of courts, as applicable, to adopt: (1) case management plans to ensure readiness of cases for pretrial and trial; (2) jury management plans to ensure efficient and effective use and management of jury resources; (3) technology plans to ensure efficient and effective use of technology in the delivery of services of the court or division; and (4) reporting-to-law-enforcement-and-compliance plan to ensure complete, accurate, and timely submission of information into law enforcement databases.

2. Court Appointments (Sup.R. 4.31)

Sup.R. 4.31 requires each court or division of a court to adopt local rules governing appointment of counsel and, for appointments frequently made in the court or division, mandates that the local rule include certain provisions concerning the management of a court-appointment list.

3. Recording of Court Proceedings (Sup.R. 10)

Sup.R. 10 prescribes the methods by which a court may record proceedings before it and addresses custody of electronic recordings, their transcription, the parties' access to the electronic recordings, and expenses related to copying and inspecting electronic recordings.

4. Recording, Broadcasting and Photographing Court Proceedings (Sup.R. 11)

Sup.R. 11 provides the procedure for requesting permission to broadcast, televise, record, or take photographs in the courtroom. The rule also provides specific limitations on the recording or broadcasting, permissible equipment and operators for video, still photography, audio recording, or broadcasting of court proceedings, and places prohibitions on the recording of jurors, witnesses, and juvenile defendants.

5. Deposition Testimony and Evidence (Sup.R. 10.01)

Sup.R. 10.01 provides requirements for recorded depositions and the use of pre-recorded testimony at trial.

6. Mediation (Sup.R. 6.01-6.06)

Sup.R. 6.01 through 6.06 apply when a court elects to use mediation. These rules set forth requirements concerning adoption of a local mediation rule, responsibilities of a mediator, mediator education and training requirements, responsibilities of courts utilizing mediation, and access to public records concerning mediation.

7. Neutral Evaluation (Sup.R. 6.30-6.35)

Sup.R. 6.30 through 6.35 apply when a court elects to use neutral evaluation and to an evaluator conducting a neutral evaluation.

8. Parenting Coordination (Sup.R. 6.40-6.46)

Sup.R. 6.40 through 6.46 apply when a court elects to use parenting coordination and to a parent coordinator conducting parenting coordination.

9. Court Records – Public Access (Sup.R. 11.09-11.16)

Ohio courts are not subject to R.C. 149.43, the statute that generally governs public records in the state. Rather, public records requests to Ohio courts are governed by Sup.R. 11.09-11.16.

Court records are presumed open to public access. The rule requires a court or clerk of court to make court records available by direct access duplicated upon paper, upon the same medium on which the court or

clerk keeps it, or upon any other medium the court or clerk determines it can be reasonably duplicated as an integral part of its normal operations. Courts are required to “mail, transmit, [or] deliver copies within a reasonable time and charge its actual costs.”

Sup.R. 11.13 requires a party to a judicial action or proceeding to omit personal identifiers from documents when submitting a case document to a court or filing a case document with a clerk of court and permits the court or clerk of courts to provide a standard form for parties to use when personal identifiers are omitted from a case document.

Sup.R. 11.14 permits a party to a judicial action or proceeding or other person who is the subject of information in a case document to move the court to restrict public access to the information or, if necessary, the entire document.

Sup.R. 11.16 provides the effective dates for Sup.R. 11.09-11.16 regarding case documents and administrative documents, prescribes mandamus as the proper remedy for denial of public access and addresses liability and immunity for denial of public access.

10. Guardians ad Litem (Sup.R. 8.01-8.07)

These rules apply in all domestic relations and juvenile cases where a court appoints a guardian ad litem to protect and act in the best interest of a child. The rules set forth the process for appointing a guardian and addresses payment to the guardian ad litem, the guardian’s responsibilities and reporting requirements, and the responsibilities of the court. Additionally, the rules establish training requirements for guardians.

11. Probate Division of the Court of Common Pleas (Sup.R. 8.31-8.39)

These rules clarify probate guardianship, including establishment, responsibilities, and education requirements.

12. Appointment of a Foreign Language or Sign Language Interpreter (Sup.R. 9.10)

Sup.R. 9.10 addresses requirements for registration and certification of foreign language interpreters and sign language interpreters eligible for appointment in a case or court function. The rule provides that such interpreters must adhere to the Code of Professional Conduct for Court Interpreters and Translators and meet continuing education requirements, address the use of artificial intelligence in court interpretation services and specify the circumstances under which a court must appoint a foreign language interpreter or sign language interpreter.

A court must appoint a foreign language interpreter in a case or court function when a party or witness who does not speak English or has limited English proficiency requests a foreign language interpreter and the court determines that such services are needed for the party to participate meaningfully in the proceedings; or even without a request for a foreign language interpreter, the court determines that such services

are needed for the party or witness to participate meaningfully in the proceedings.

Similarly, a court must appoint a sign language interpreter when a party, witness or juror who is deaf, hard of hearing, or deaf and blind requests a sign language interpreter; or even without a request for a sign language interpreter, the court determines that such services are needed for the party, witness, or juror to participate meaningfully in the proceedings.

13. Custody Evaluation (Sup.R. 8.10-8.18)

Sup.R. 8.10 through 8.18 apply when a court of common pleas appoints a person to perform a custody evaluation to assist the court concerning child custody or parenting visitation that is at issue in a case.

14. Sealing or Expungement of or Restricting Public Access to Court Records (Sup.R. 11.17)

Sup.R. 11.17 provides forms for use in sealing or expungement of or restricting public access to court records in various types of cases including juvenile delinquency and criminal cases.

VIII. RULES FOR OHIO JUDGES AND ATTORNEYS

A. Supreme Court Rules for the Government of the Judiciary of Ohio

The Rules for the Government of the Judiciary specify that the Ohio Rules of Professional Conduct and Code of Judicial Conduct are binding upon judges and mandate disciplinary consequences for the willful breach of those standards. Additionally, these rules establish the disciplinary procedure for judges and judicial candidates; address circumstances concerning disability, retirement, removal, or suspension of judges; set forth mandatory continuing legal education for the judiciary, and address the role of the Judicial College.

B. Ohio Code of Judicial Conduct

The Ohio Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. The code is intended to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

C. Supreme Court Rules for the Government of the Bar of Ohio

The Rules for the Government of the Bar govern all aspects of the Court's regulation of attorneys in Ohio, including admission to the practice of law (Rule I), disciplinary procedure (Rule V), registration requirements (Rule VI), continuing legal education (Rule X), and pro hac vice admission (Rule XII)

D. Ohio Rules of Professional Conduct

The Ohio Rules of Professional Conduct establish standards of ethical conduct for all persons admitted to the practice of law in Ohio.

E. Rules for Appointment of Counsel in Capital Cases

The Rules for Appointment of Counsel in Capital Cases were promulgated to promote the effective administration of justice in the appointment of attorneys as counsel for indigent defendants in capital cases. The Rules govern the certification, training, appointment, and monitoring of counsel in capital cases involving indigent defendants.

IX. MISCELLANEOUS RULES

A. Mayor's Court Education and Procedure Rules

A mayor of a municipal corporation in Ohio may conduct a mayor's court.

B. Supreme Court Rules for the Reporting of Opinions

The Supreme Court Rules for the Reporting of Opinions, designed to establish consistent standards, apply to the reporting of opinions of the Supreme Court, the courts of appeals, and the Court of Claims.

C. Rules for the Court of Claims of Ohio

These rules govern proceedings in the Ohio Court of Claims, which was created to hear claims against the State of Ohio for money damages, and now also hears appeals from Attorney General decisions regarding claims filed under the Victims of Crime Compensation Program, and resolves disputes regarding access to public records.

D. Local Rules for the Court of Claims of Ohio

These rules are established by the Ohio Court of Claims and govern the details of practice and procedure before that court.

E. Local Rules

Most courts in Ohio also have adopted local rules, a particular set of rules for practice and procedure in each court. Local rules reflect the courts' traditional authority to manage their own affairs so to achieve the orderly and expeditious disposition of cases. Local court rules are posted on the Supreme Court's website and often are available on the website of the individual court. Additionally, in courts with multiple judges, individual judges may post their judicial preferences on the management of their docket and courtroom on issues such as voir dire, discovery disputes, continuances, and settlement conferences.

WILLS & TRUSTS

The law governing wills and trusts are generally similar in most jurisdictions, however, each state has specific statutory provisions that may differ from other jurisdictions. The Ohio statutes governing wills and intestate succession are found in Ohio Revised Code Title 21. Ohio has also adopted statutes in 2007 known as the Ohio Trust Code which statutes are found in Ohio Revised Code Title 58. The Ohio Trust Code statutes were derived from the Uniform Trust Code. This outline identifies specific provisions of Ohio law involving wills, intestate succession, and trusts for the benefit of applicants for admission to the practice of law in Ohio.

I. INTESTACY

A. Intestacy statutes establish the order in which persons succeed to the property of an intestate decedent (a person who dies without a valid will). The Ohio statutory provisions with regard to intestacy are set forth below.

1. Surviving Spouse and No Child or Descendant

If an intestate decedent is survived by a spouse, but no children or their lineal descendants, the estate passes entirely to the surviving spouse. R.C. 2105.06(E).

2. Surviving Spouse and One Child or Descendants

a. If Spouse is Parent of Child

If an intestate decedent is survived by a spouse and one child of the decedent or the child's lineal descendants, or if the spouse is the natural or adoptive parent of the child, the entire estate will pass to the spouse. R.C. 2105.06(B).

b. If Spouse is Not the Parent of Child

If the surviving spouse is not the natural or adoptive parent of the child, the spouse will take the first \$20,000 of the intestate's estate, plus one-half of the balance of the intestate's estate. The remainder of the estate will pass to the child or to the child's lineal descendants.

3. Surviving Spouse and More Than One Child or Descendants

a. If Spouse is Parent of All Children

If the intestate decedent is survived by a spouse and more than one child of the decedent or the children's lineal descendants, and if the spouse is the natural or adoptive parent of all of the children, then the entire estate will pass to the spouse. R.C. 2105.06(B).

b. If the Spouse is the Parent of One but Not All Children

If the intestate decedent is survived by a spouse and more than one child or their lineal descendants, and if the spouse is the natural or adoptive parent of one but not all of the children, the spouse will take the first \$60,000 of the estate, plus one-third of the balance. The remainder of the estate passes to all of the decedent's children equally, or to the lineal descendants of any deceased child. R.C. 2105.06(D).

c. If Spouse is Not the Parent of Any of the Children

If the intestate decedent is survived by a spouse and more than one child or their lineal descendants, and the spouse is not the natural or adoptive parent of any of the children, the spouse will take the first \$20,000 of the estate, plus one third of the balance. The remainder of the estate passes to the children equally, or to their lineal descendants. R.C. 2105.06(D).

B. Children and Other Descendants

Any portion of an intestate decedent's estate that does not pass to the surviving spouse will pass to the children of the decedent or the descendants of any deceased children of the decedent.

1. Ohio Rules

If there is no surviving spouse, the children of the intestate inherit equally, or their lineal descendants take per capita with representation. R.C. 2105.06(A). If some of the children of the intestate are living and others are dead, the estate will pass to the children who are living and to the lineal descendants of the dead children. Each living child will receive the share to which they would have been entitled if all the children of the intestate were alive and the lineal descendants share the deceased child's share. R.C. 2105.13.

2. Adopted Children

a. Intestate Succession With Regard to Adoptive Family

Ohio treats an adopted child the same as a birth child of the adoptive parents for purposes of intestate succession. R.C. 2105.06.

b. Intestate Succession With Regard to Birth Parents

An adopted child generally has no rights to intestate succession of the property of his or her birth parents and the birth parents have no rights to intestate succession of the property of a child who was adopted by others. R.C. 3107.15(A)(1).

C. If No Spouse or Issue

If no surviving spouse or issue exists to succeed to the decedent's estate, the property may be distributed to the decedent's ancestors and more remote collateral relatives.

1. Parents

If an intestate decedent has no surviving spouse and no children or their lineal descendants, the decedent's estate will pass to his or her parents equally, or if there is only one surviving parent, to the surviving parent, who takes the entire estate. R.C. 2105.06(F).

2. Siblings

If the intestate decedent has no surviving spouse, children or their lineal descendants, or parent, the estate will pass to the decedent's brothers and sisters, whether half or whole blood, or their lineal descendants, per stirpes. R.C. 2105.06(G).

If the intestate decedent has no surviving spouse, children or their lineal descendants, parent, or siblings or their lineal descendants, one-half of the estate will pass to the paternal grandparents of the intestate equally, or to the survivor of them, and one-half of the estate will pass to the maternal grandparents of the intestate equally, or to the survivor of them. R.C. 2105.06(H).

3. Next of Kin

If the intestate decedent has no surviving spouse, children or their lineal descendants, parent, siblings or their lineal descendants, or grandparents or their lineal descendants, the estate passes to the intestate's next of kin. The next of kin would be the intestate's closest living blood relatives or if none, to stepchildren. R.C. 2105.06(I). If there are no stepchildren or their lineal descendants, the estate will escheat to the state. R.C. 2105.06(K).

D. Survival Requirements Under Ohio Law

Many states have created laws dealing with the time an individual must survive the decedent in order to inherit. If an heir of a decedent fails to meet the survival requirement, the heir is considered to have predeceased the decedent and does not take under the laws of intestacy. The same rules apply to establish rights as a beneficiary under a will.

1. Ohio Rule – 120 Hours

By statute, Ohio requires that an heir or beneficiary must survive the decedent by 120 hours in order to take by intestacy or under the decedent's will, unless the decedent has provided otherwise by will. R.C. 2105.32. For example, a testator could require a survival period of more or less than 120 hours in their will which will govern.

a. Application

In general, the statutory 120 hour period applies whenever the title to real or personal property or the devise of real or personal property depends upon a person's survivorship of the death of another person (e.g. under the intestacy rules, under a will, through a joint tenancy with the right of survivorship, or under a life insurance contract).

b. Exception

The 120-hour rule does not apply if its application would result in escheat to the state. R.C. 2105.32(B).

E. Advancements Under Ohio Law

An advancement is a gift that is made by an intestate during their life to a relative with the intent that it be applied against any share in the intestate's estate to which the relative may later be entitled.

1. Property given during lifetime to an heir will be treated as an advancement against the heir's share of the estate only if declared in a contemporaneous writing by the decedent, or acknowledged in writing by the heir to be an advancement. R.C. 2105.051.

An advancement will not be taken into account in computing the intestate share to be received by the heir's lineal descendants, unless either the declaration or acknowledgment provides otherwise.

2. The value of property that was advanced is determined as of the time the heir came into possession or enjoyment of the property. R.C. 2105.051.

II. EXECUTION OF WILLS UNDER OHIO LAW

A. Formalities

For a will to be admissible to probate, the testator must meet the formal execution requirements set forth by Ohio statute. Ohio does have a harmless error rule which could result in minor deficiencies being excused in the execution of formalities of a will. If the primary statutory requirements for execution are not satisfied, the instrument will be void and inadmissible to probate. The intestacy statute will then apply to determine the distribution of the decedent's property.

Ohio also will admit a will to probate if it appears the will was attested to and executed according to the laws of the state where it was executed, where the testator was domiciled at the time of their death, or where the testator died. R.C. 2107.18.

1. Testamentary Capacity

In Ohio, any person over the age of 18 who is of sound mind and memory, and not under restraint, may make a will. R.C. 2107.02.

2. In Writing

The entire will must be in writing. Writing includes printing or handwriting. The will can incorporate by reference any writing that is in existence at the time the will is executed. An oral will is permissible under certain limited circumstances.

3. Signature at the End of the Will

- a. The will must be signed at the end by the testator or by some other person in the testator's conscious presence and at the testator's express direction. R.C. 2107.03. While some states allow the signature on any part of the will, Ohio requires the signature to be at the end of the will.

- b. Form of Signature

The testator's complete formal name is not required, as long as the signature indicates his or her desire to sign. The will also may be signed by another on behalf of the testator, provided that the other person signs the testator's name, at the express direction of the testator who must be in their presence. R.C. 2107.03.

4. Witnesses

a. Number of Witnesses

The will must be attested and signed in the conscious presence of the testator by two or more competent witnesses, who saw the testator sign, or heard the testator acknowledge the testator's signature. R.C. 2107.03. To be competent, witnesses must be at least 18 years old. Witnesses need not sign in each other's presence. The attesting and subscribing witnesses are not required to sign in the presence of each other.

b. Acknowledgment

It is not necessary that the witnesses see the testator sign the will. The testator is permitted to acknowledge the signature to the witnesses. Acknowledgment need not be by express words and can be inferred from conduct or circumstances.

c. Witness Cannot Be Beneficiary

A witness generally must not be a beneficiary under the will. An exception applies if the witness would have been entitled to a share of the testator's estate if the will was not admitted to probate. In that situation, the witness may only take the lesser of the bequest/devise under the will or their intestate share. R.C. 2107.15.

d. Executor or Attorney Who Drafted Will

An executor under a will is a competent witness to the will and would not be disqualified from acting as executor. An attorney who drafted the will is a competent witness.

e. Testamentary Intent

The testator must execute the will with present testamentary intent in order for the instrument to be sustained as a will. When the testator signs the instrument, they must understand that they are executing a will. Testamentary intent is a question of fact to be determined by an examination of the will.

B. Holographic Wills

Ohio does not recognize holographic (entirely handwritten and unattested) wills or codicils executed in Ohio, but will recognize holographic wills and codicils if validly executed in other states.

C. Oral Wills

Ohio permits oral wills to be used to distribute a testator's personal property if made during the testator's last sickness and, within 10 days after being

spoken by the testator, the testamentary words are reduced to writing and subscribed by two competent and disinterested witnesses. An oral will is not valid to transfer real property. The witnesses must prove that the testator was of sound mind and memory, not under restraint, and that the testator called upon them to bear testimony to such disposition as the testator's will. An oral will must be offered for probate within three months after the death of the testator. R.C. 2107.60.

An oral will cannot be used to revoke or modify inconsistent provisions of a prior written will.

D. Choice of Law

1. Real Property

The disposition of real property under a will is governed by the law of the state in which the real property is located.

2. Personal Property

The disposition of personal property under a will is governed by the law of the domicile of the testator at the time of their death.

3. Foreign Wills

Ohio will admit a will created in a foreign state to probate if it appears that the will was attested to and executed according to the laws of the state where it was executed, where the testator was domiciled at the time of their death, or where the testator died. R.C. 2107.18.

E. Codicils

A codicil is a supplement to an existing will that alters, amends, or modifies the will, rather than replacing it. A codicil must be executed with the same testamentary formalities as a will. A validly executed codicil republishes the will as of the date of the codicil, and may even validate a prior invalid will if the codicil refers to the will with sufficient certainty to identify and incorporate it by reference.

F. Non-Probate Assets

Distribution of non-probate assets does not involve a court proceeding. Distributions of non-probate assets are done in accordance with the terms of a contract, trust, deed or affidavit.

1. Revocable Trusts

When a trustee holds legal title and a beneficiary holds equitable title, there is no need for title to be transferred upon the death through probate court and thus inter vivos trust property is non-probate property. A trust that is silent as to its revocability is deemed revocable.

2. Joint Bank Accounts with Right of Survivorship

Amounts on deposit in a bank account may be transferred at death by means of a joint account designation or any other multiple party account designation.

3. Payable on Death Account

By statute, Ohio permits a decedent to have a contract with a bank or other financial institution to distribute the property held under the contract at the decedent's death to a named beneficiary. The beneficiary of a payable on death account has no right to the proceeds until the owner's death. During the beneficiary's lifetime, the owner may change the beneficiary or terminate the account without the consent of the beneficiary. R.C. 2131.10.

4. Life Insurance

A beneficiary of a life insurance policy takes by virtue of the insurance contract. The proceeds are not part of the decedent's estate, unless they are payable to the estate as a beneficiary. Divorce revokes a former spouse's designation as beneficiary. If a contingent beneficiary was not named in the instrument, proceeds will be paid to the decedent's estate. R.C. 5815.33.

5. Transfer on Death Deed or Affidavit

In Ohio, a transfer on death deed is a valid instrument to convey real property if created before July 1, 2009. R.C. 5302.17. However, a transfer on death designation created after July 1, 2009, must be in the form of a transfer on death designation affidavit. R.C. 5302.22. Such instruments can be revoked or amended at any time prior to death and beneficiaries have no interest in the real property until the owner's death.

6. Motor Vehicles, Watercraft, or Outboard Motor Certificate of Title

An Affidavit for designation of a beneficiary or beneficiaries by the sole owner of a motor vehicle, watercraft, or outboard motor, may authorize a beneficiary or beneficiaries on a certificate of title. R.C. 2131.13(A). The owner will need the full legal name of the designated beneficiary, their social security number, address, and date of birth.

III. REVOCATION OF WILLS

A testator retains the ability to revoke a will at any time prior to death, even if the testator has executed a valid contract not to revoke the will. In such a case, the revoked will must be denied probate, but the interested parties may bring an action for breach of contract against the estate of the decedent. A testator's revocation of a will is valid only if the testator, at the time of the revocation, has the same capacity as the law requires for the execution of a will. A will may be revoked wholly or partially by subsequent writings, physical destruction of the will, or operation of law.

A. Subsequent Instrument Meeting Will Formalities

A testator can expressly revoke a will or any part of a will by subsequent writing or by later will or codicil, so long as the testator has a present intent to revoke and the subsequent instrument is executed with the same formalities as are required for the execution of a will under Ohio law. R.C. 2107.33(A).

The revocation can be express or can be implied by the terms of the subsequent instrument. A subsequent will does not revoke a former will unless the second will contains express words of revocation of the former will.

B. Destruction with Intent to Revoke

By statute, Ohio also allows a will to be revoked by canceling, tearing, obliterating, or destroying a material portion of the will with the intent to revoke it. The physical act may be done by the testator, by some person in the testator's presence, or by someone at the testator's express written direction. R.C. 2107.33(A).

1. Physical Act

Obliteration or canceling requires material defacement of the language of the will. Merely writing words of cancellation on the back or in the margin of the will is not effective revocation.

2. Presumption Against Revocation for Lost or Destroyed Will

In Ohio, if an original will is lost or destroyed, the probate court may admit a copy of the will to probate if the proponent of the will establishes by clear and convincing evidence both the contents of the will and that the will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed.

A person opposing the admission of a copy of the will to probate may rebut this presumption by establishing by a preponderance of the evidence that the testator had revoked the will. R.C. 2107.26.

3. Revocation by a Third Party

A third party can revoke a will on behalf of the testator as long as the revocation is either at the testator's direction and in the presence of the testator, or at the express written direction of the testator. R.C. 2107.33(A).

C. Revocation of Provisions by Operation of Law

1. Subsequent Marriage

Ohio law provides that a will executed by an unmarried person is not revoked by a subsequent marriage. R.C. 2107.37. The new spouse is seen as protected by various statutes establishing a statutory spousal share of the estate.

2. Divorce, Annulment, and Final Separation

In Ohio, if a testator who previously executed a will is divorced, obtains an annulment or final dissolution of marriage, or enters into a final separation agreement, any provision in the will providing for a disposition of property to the former spouse or any provision nominating the former spouse as executor, trustee, or guardian will be automatically revoked, unless the will expressly provides otherwise. R.C. 2107.33(D). The property passing to the former spouse passes as though the former spouse had predeceased the decedent. The rest of the existing will remains in effect.

IV. CONSTRUCTION OF TERMS IN A WILL

A. Classification System – Classes of Legacies, Devises, and Bequests

1. Specific

A specific legacy, devise, or bequest is a gift real or personal of property that can be distinguished with reasonable accuracy from other property that is part of the testator's estate.

2. General

A general legacy is a gift of personal property that the testator intends to be satisfied from the general assets of the estate.

3. Demonstrative

A testator intends that a demonstrative legacy be paid from a particular source, but if that source is insufficient, they direct that the legacy be satisfied out of the general assets of the estate.

4. Residuary

A residual legacy is a legacy of the estate remaining when all claims against the estate and all specific, general, and demonstrative legacies have been satisfied.

B. Incorporation by Reference

By statute in Ohio, a will may incorporate by reference another writing not executed with testamentary formalities, provided the other writing existed at the time the will was executed. R.C. 2107.05. Ohio courts have required that the will must describe the other writing as being in existence, identify the writing with sufficient detail to identify it, the writing must fit the description, and the will must show the testator's intent to incorporate it.

C. Lapse and Anti-Lapse Statute

1. General Rule

If a beneficiary dies before the testator, or within 120 hours of the testator, or, before the end of a different period of time by which they were required under the will to survive the testator, the gift fails and goes to the residue unless the will provides for an alternate disposition. This is known as lapsing. Absent a residuary clause, a lapsed gift passes through intestacy.

2. Anti-Lapse Statute

a. Ohio Rule

Ohio, like most states, has enacted an anti-lapse statute providing for alternate disposition of lapsed bequests and devises. Under the statute, unless a contrary intention is manifested in the will, if a devise or bequest is made to a blood relative of a testator who was dead at the time the will was executed, or who dies after that time, leaving lineal descendants surviving the testator, the blood relative's

descendants take by representation the property that would have gone to the blood relative had they survived the testator. R.C. 2107.52; see also R.C. 5808.19 for similar anti-lapse provisions under a trust.

b. Class Gift Rule

Where a gift is to an entire class and one member of the class dies, only the surviving class members still take, absent a contrary provision in the will or the application of the anti-lapse statute. If the anti-lapse statute applies, the surviving descendants of the deceased class member will take the deceased member's share.

D. Abatement

1. Order

Gifts by will are reduced or abated when the assets of the estate are insufficient to pay all debts and legacies. The testator may indicate the intended order of abatement in the will, but if a testator fails to do so, then the law prescribes an order. A residuary beneficiary will abate before a general beneficiary and a general beneficiary will abate before a specific beneficiary.

2. Right of Contribution

If a beneficiary has their bequest taken to satisfy a creditor of the decedent, Ohio provides a statutory right of contribution from the other beneficiaries who are required to share in the debt or pay it before the beneficiary who lost the bequest. R.C. 2107.54-.58. Other beneficiaries must contribute their proportionate share of the loss to the beneficiary who had the bequest taken so that all beneficiaries of the same class share the loss equally.

E. Ademption

1. Ademption by Extinction

The doctrine of ademption applies only to specific devises and bequests. If the subject matter of a specific devise or bequest is missing or destroyed, the beneficiary takes nothing.

a. Substantial Change

A substantial change in the nature of the subject matter of a bequest will operate as an ademption, but a merely nominal or formal change will not.

b. Beneficiary Entitlement

Pursuant to R.C. 2107.501, when property is partially adeemed, a beneficiary will be entitled to whatever is left of the specifically devised or bequeathed property and any balance on the purchase price, together with any security interest owing from a purchaser to the testator at death by reason of the sale of the property; or any proceeds unpaid at the testator's death from fire or casualty insurance on the property.

2. Ademption by Satisfaction

A general legacy may be satisfied in whole or in part by an inter vivos transfer to the beneficiary after the execution of the will, if it was the testator's intent to satisfy the legacy by the transfer.

The testator's intent to adeem must exist before the legacy or bequest is rendered inoperative. The intent of the legatee in receiving the gift does not control whether the legacy is to be regarded as adeemed.

F. Exoneration of Liens

If specifically devised property is subject to a lien that secures a debt on which the testator was personally liable, the beneficiary of the property under the will may be entitled to demand payment of the debt out of the residuary of the will, unless the will specifically provided otherwise.

The law is different on a lien on specifically devised real property which will not be exonerated unless the will directs such action. R.C. 2113.52.

V. RIGHTS OF SURVIVING SPOUSE

A. Elective Share

Ohio has an elective share statute designed to ensure that a surviving spouse is not disinherited by a will. The elective share gives the surviving spouse a share of the decedent's estate if the surviving spouse elects to take the elective share rather than the share in the will. The elective share applies to all probate property of the decedent, regardless of when it was acquired.

1. Amount of Share

The amount of the share depends on the number of lineal descendants who survive the decedent.

If the decedent is not survived by children, or by one child or that child's lineal descendants, an electing surviving spouse's share will not exceed one-half of the net estate.

If the decedent is survived by two or more children, or their lineal descendants, an electing surviving spouse's share will not exceed one-third of the net estate. R.C. 2106.01(C).

2. Time and Procedure for Election

The election of a surviving spouse may be made at any time after the death of the decedent, but must occur no later than five months from the date of the initial appointment of an administrator or executor of the estate. The election must be made in person before the probate court by the surviving spouse.

If no action is taken by the surviving spouse before the expiration of the five-month period, it is conclusively presumed that the surviving spouse elects to take under the will. R.C. 2106.01(E).

3. When Spouse Succeeds to Entire Estate

If the surviving spouse succeeds to the entire estate of the testator, it is presumed that the spouse elects to take under the will of the testator, unless they manifest a contrary intention. R.C. 2106.01(F).

4. Death of Surviving Spouse Before Probate or Making Election

If the surviving spouse dies before probate of the will or before making an election, the surviving spouse will be conclusively presumed to have elected to take under the will.

B. Spousal Support

Ohio has other statutory provisions that apply in an attempt to ensure that a surviving spouse has adequate support while the decedent's estate is in probate.

1. Support Allowance (Spouse and Children)

Ohio provides for a support allowance of \$40,000, available to a surviving spouse, a spouse and minor children, or, if there is no spouse, to the decedent's minor children under R.C. 2106.13. The surviving spouse will receive all of the allowance, unless there are minor children who are not the surviving spouse's children.

2. Mansion House (Family Home)

A surviving spouse may remain in the family home (or "mansion house") free of charge for one year.

3. Automobiles

A surviving spouse is entitled to an unlimited number of automobiles (including cars, motorcycles, and trucks) that are not otherwise transferred to the surviving spouse due to joint ownership or otherwise specifically disposed of in the will may be selected by the surviving spouse and will pass to the spouse by statute. The total value of the automobiles cannot exceed \$65,000. R.C. 2106.18.

4. Watercraft or Outboard Motor

The decedent's interest in one watercraft, one outboard motor, or one of each, that are not specifically devised of in the will may be selected by the surviving spouse and will pass to the spouse by statute. R.C. 2106.19.

VI. EXCEPTIONS TO INHERITANCE

A. Slayer Statute

Ohio statutes prohibit any person to inherit from the decedent's estate if the person is convicted of or pleads guilty to the felonious and intentional killing of the decedent or for complicity in the crimes of murder or voluntary manslaughter. R.C. 2105.19. Any property of the decedent that is payable or distributable as a result of the decedent's death will pass or be paid or distributed as if the person who caused the decedent's death had predeceased the decedent.

Ohio bars the killer from taking over the decedent's will under intestate succession, or from receiving the proceeds of the decedent's life insurance policy, any rights of survivorship with regard to a joint tenancy, transfer on death rights, or joint bank accounts. R.C. 2105.19(A).

B. Disclaimer

Because acceptance of a testamentary gift or a share of an intestate's estate is presumed, a party must actively disclaim it if they wish not to accept it. The disclaiming party is treated as if they had predeceased the decedent, and the property is distributed to the next eligible taker under the will or the intestacy statute. R.C. 5815.36.

VII. WILL CONTESTS

A. Testamentary Capacity

In Ohio, in order to execute or revoke a will, the testator must be at least 18 years old and possess a sound mind at the time of execution or revocation. R.C. 2107.02.

1. General Testamentary Capacity

The testator lacks the requisite mental capacity if he, at the time of execution, did not have the ability to:

- a. Understand the nature of the business in which the testator is engaged;
- b. Comprehend generally the nature and extent of his property;
- c. Hold in his mind the names and identities of those who have natural claims upon his bounty; and
- d. Be able to appreciate his relationship to the members of his family.

2. Natural Claims on Testator's Bounty

Typically, the natural objects of the testator's bounty include those persons related to the testator by consanguinity, but also may include a testator's spouse or others who are close to him.

3. Burden of Proof on Party Alleging Incapacity

The burden of proof is on the party alleging testamentary incapacity. Only those parties that would financially benefit, if successful, have standing to contest a will due to alleged incapacity. The issue of testamentary capacity must be applied as of the date the will was executed or revoked.

B. Undue Influence

Undue influence is mental or physical coercion exerted by a third party on the testator with the intent to influence the testator such that they lose control of their own judgment. The test of undue influence is the substitution of another's will for that of the testator. Once a will is determined to have been the product of undue influence, it may be invalidated in whole or in part, as long as the overall testamentary scheme is not altered thereby.

1. Elements of Undue Influence

- a. A “susceptible” testator;
- b. Another’s opportunity to exert undue influence;
- c. The fact of improper influence exerted; and
- d. The result showing the effect of such influence.

2. Existence of Factors Not Determinative

Mere advice, persuasion, kindness, or other similar factors will not alone constitute undue influence. It must be actually exerted on the mind of the testator with respect to the execution of the will in question.

3. Time of Influence

Undue influence must have been exerted at the time of execution (or revocation) of the will, resulting in dispositions which the testator would not otherwise have made.

4. Presumption of Influence

a. Confidential Relationship

A presumption of undue influence arises when a beneficiary under the will had a confidential relationship with the testator at the time the will was executed. A “confidential relationship” exists, for purposes of a claim of undue influence, when trust and confidence are placed in the integrity and fidelity of another.

b. Burden of Proof Shifts

Upon a finding of a confidential relationship, a presumption of undue influence arises and the burden shifts to the beneficiary to show by a preponderance of the evidence that such influence was not exercised.

c. Treatment of Beneficiary

A beneficiary who is shown to have exerted undue influence is treated as having predeceased the testator to the extent that the gift to them exceeds their intestate share of the testator’s estate.

d. When Testator’s Attorney is Beneficiary

A gift to the testator’s attorney is especially susceptible to a claim of undue influence because of the confidential and fiduciary relationship between an attorney and its client. A rebuttable presumption of undue influence generally exists unless the attorney is related by blood or marriage to the testator.

VIII. TRUSTS

A. Creation

1. Requirement of trust res

The res of a trust, also known as the trust corpus or principal, is the actual property, assets, or funds transferred into and held by the trust. It is the fundamental body of the trust managed by the trustee for the beneficiaries.

Although Ohio law recognizes the validity of unfunded trusts, R.C. 5804.02(D), most trusts will contain a res. The res can be virtually any transferable asset, including cash, real estate, stocks, bonds, or business interests. The res must be legally separated from the personal assets of the trustee and the person who created the trust (the grantor or settlor).

2. Requirement of beneficiary

A trust beneficiary is an individual, group, or organization designated to receive benefits, assets, or income from the trust. R.C. 5801.01(C). Beneficiaries are considered the equitable owners of the trust property, while the trustee holds legal title to the res and manages it according to the trust document and relevant law.

A trust must have a definite beneficiary, meaning the beneficiary must be ascertainable now or in the future, subject to limited statutory exceptions. R.C. 5804.02(A)(3), (B).

a. Types of beneficiaries:

- i. **Income Beneficiaries:** They are entitled to receive the income generated by the trust (e.g., interest, dividends, rent) during their lifetime or for a specific period. R.C. 5801.01(F).
- ii. **Remainder (or Principal) Beneficiaries:** They receive the remaining assets or principal of the trust after the income beneficiaries' rights have expired or the trust has been terminated. R.C. 5801.01(C).
- iii. Although they do not manage the trust, beneficiaries have legally protected rights, including:
 01. **Information and Accounting:** Beneficiaries are typically entitled to regular updates and accountings of the trust's financial state, and copies of the trust documents. R.C. 5808.13.
 02. **Right to Distribution:** Beneficiaries have the right to receive payouts as explicitly controlled by the trust agreement, subject to trustee duties and the terms of the trust.
 03. **Legal Recourse:** Beneficiaries can take legal action to remove the trustee and/or recover losses if the trustee engages in misconduct, mismanagement, or fails to follow the terms of the trust. R.C. Ch. 5810.

3. Requirement of trustee

A trustee is a person or entity appointed to legally hold, manage, and distribute assets within a trust on behalf of its beneficiaries. A trustee is legally required to follow the instructions outlined in the trust document and act in the beneficiaries' best interests. R.C. 5808.01. A trustee possesses a fiduciary duty, meaning they are held to the highest standard of care, loyalty, and impartiality. R.C. 5808.01–5808.03. Their main responsibilities include:

- a. Asset Management: Protecting, maintaining, and investing the trust's assets prudently. R.C. 5808.04, 5808.09.
- b. Distribution: Releasing funds or property to the beneficiaries according to the exact terms of the trust. R.C. 5808.16(V).
- c. Record Keeping and Taxes: Keeping accurate financial records and providing necessary reports. R.C. 5808.10, 5808.13.

A trustee can be:

- a. An Individual: Often a trusted family member, friend, or the person who created the trust (the grantor or settlor).
- b. A Professional: A licensed private professional fiduciary, accountant, or attorney.
- c. An Institution: A corporate entity, such as a bank or specialized trust company.

B. Types of Trustees

1. Initial Trustee: The person or entity who initially manages the trust. In revocable living trusts, this is often the grantor or settlor themselves. R.C. 5804.02.
2. Successor Trustee: A backup trustee named in the document or appointed by a court who serves if the initial trustee dies, resigns, becomes incapacitated, or is removed. R.C. Ch. 5807.

C. Types of Trusts

1. Revocable

A revocable trust (or living trust) is created during the settlor's lifetime to manage and protect assets. The settlor is often the initial trustee and maintains full control over the trust and can amend, cancel, or remove property at any time. Upon the settlor's death or incapacity, a successor trustee takes over. R.C. 5807.04. All trusts are presumed to be revocable unless the trust document explicitly states it is irrevocable. R.C. 5806.02(A).

Primary benefits of a revocable trust include:

- a. Avoiding Probate: Assets held in a revocable trust bypass the probate process, transferring directly to beneficiaries.
- b. Privacy: Unlike a probated will, a trust is generally not part of the public probate record.

- c. Asset Management During Incapacity: A successor trustee may manage trust assets without court appointment if the settlor becomes incapacitated.

Key limitations include the ability of creditors and Medicaid authorities to reach trust assets, given the settlor/initial trustee's retention of control. R.C. 5805.06.

2. Irrevocable

An irrevocable trust is a legal arrangement where the settlor/grantor gives up legal ownership of trust assets. Once established and funded, an irrevocable trust generally cannot be modified, amended, or terminated without court approval or the consent of beneficiaries. R.C. 5801.01; R.C. 5804.11(B). To make a trust irrevocable, the settlor/grantor must explicitly state that in the trust instrument. R.C. 5806.02(A). Because the settlor/grantor surrenders control to a trustee, the assets in an irrevocable trust are generally not treated as the settlor's property for creditor purposes. R.C. 5805.05 and 5805.06.

- a. Primary benefits of an irrevocable trust include:
 - i. Asset Protection: Trust assets are generally protected from the settlor's creditors once control is relinquished. R.C. 5805.05 and 5805.06.
 - ii. Medicaid Planning: Irrevocable trusts may remove assets from the settlor's estate for eligibility purposes (subject to federal and state Medicaid rules). R.C. 5805.06.
 - iii. Estate and Tax Reduction: Irrevocable trusts may reduce taxable estate exposure depending on structure.
- b. Modifying or terminating an irrevocable trust may be allowed:
 - i. When all beneficiaries consent, R.C. 5804.11, and/or;
 - ii. When allowed by court order due to changed circumstances or impracticability. R.C. 5804.12 and 5804.13.

3. Testamentary

A testamentary trust is created through a last will and testament and takes effect upon the settlor/grantor's death. R.C. 5804.01(A). The probate court has jurisdiction to supervise such trusts, and trustees are accountable to the court and must provide inventories and accountings. R.C. 5802.03. Testamentary trustees may be required to post bond unless waived. R.C. 5807.02.

Common uses:

- a. Providing for minors;
- b. Special needs planning;
- c. Conditional inheritance.

4. Pour-over

This typically refers to a pour-over will used in conjunction with a revocable living trust. It creates a legal mechanism transferring probate assets into the trust at death. R.C. 2107.63.

5. Charitable

A charitable trust is a legal arrangement where property or assets are transferred to a trust and managed by a fiduciary for charitable purposes. R.C. 5804.05(A). These trusts are subject to oversight by the Ohio Attorney General. R.C. 109.23.

6. Discretionary

A discretionary trust is one where the trustee has authority to decide how and when trust assets are distributed. R.C. 5808.14 and 5808.15. Beneficiaries generally cannot compel distributions. R.C. 5808.14. Creditors generally cannot reach trust assets prior to distribution. R.C. 5805.03.

7. Support

Unlike a purely discretionary trust, a support trust imposes a duty to distribute funds for a beneficiary's support needs. Support trusts provide reduced asset protection and may be considered available resources under public benefit rules.

8. Special Needs

A special needs trust allows a disabled beneficiary to receive supplemental support without losing eligibility for government benefits. Such trusts are structured so distributions supplement, rather than replace, public assistance benefits.

9. Spendthrift Trust

A spendthrift trust prevents beneficiaries from transferring their interest and restricts creditor access to trust assets before distribution. R.C. 5805.01. Exceptions to asset protection include:

- a. Court-ordered child or spousal support, R.C. 5805.04.
- b. Federal or state claims, R.C. 5805.02.
- c. Claims for necessary services such as food or medical care.

Such trusts are commonly used for young or financially vulnerable beneficiaries or those at risk of creditor claims.





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