

FAMILY LAW FOR PARALEGALS

Eighth Edition

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Chapter One

MARRIAGE AND COHABITATION

In this chapter, we will discuss:

- ▶ the historical origins of marriage
- ▶ restrictions on marriage
- ▶ formalities of marriage formation
- ▶ what is common law marriage
- ▶ the legal rights of cohabiting couples

Marriage: Regulating the Relationship

- ▶ The modern legal approach to marriage is to permit spouses to shape the contours of their own relationship, but this is a fairly recent development.
- ▶ Historically, the law carefully defined the mutual rights and obligations of husbands and wives based upon highly gendered notions of appropriate marital conduct.

Historical Origins of Marriage Laws

- ▶ Common law origins
- ▶ Civil law tradition
- ▶ Married women's property acts
- ▶ Modern moves toward legal equality in marriage

Choosing a Spouse

- ▶ Although state laws no longer define marital rights and obligations based upon assumptions regarding the proper role of men and women, they still play a role in shaping our understanding of the marriage by imposing certain restrictions on an individual's choice of marital partner

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What 1967 case was struck down by the U.S. Supreme Court regarding anti-miscegenation laws prohibiting interracial marriages?

- Loving v. Virginia



Marriage as a Fundamental Right

- ▶ Focusing on the racial hatred that had motivated passage of anti-miscegenation laws, the Court held that Virginia had violated the equal protection clause of the Fourteenth Amendment by restricting an individual's choice of marriage partner based on racial classifications.
- ▶ It also held that, under the **due process clause** of the Fourteenth Amendment, marriage is a *fundamental right*

Loving v. Virginia

- ▶ *Loving v. Virginia* is a landmark civil rights case wherein the U.S. Supreme Court, in a 9-0 vote, struck down Virginia's anti-miscegenation law, which prohibited interracial marriage between white and "colored" persons.
- ▶ When *Loving* was decided, Virginia was one of 16 states that still prohibited interracial marriage.
- ▶ This was monumental as this case marks the first time that the Supreme Court limited the authority of a state to regulate entry into marriage.

Marital Rights of Same-Sex Partners

- ▶ In 2013, in the case of *United States v. Windsor* the Supreme Court invalidated the section of DOMA that defined marriage for purposes of federal law as being exclusively between a man and a woman.
- ▶ In 2015, in the groundbreaking case of *Obergefell v. Hodges* the Court made clear that there is but a single category of marriage that includes both heterosexual and same- sex couples alike.

Obergefell v. Hodges

- ▶ The groundbreaking case of *Obergefell v. Hodges* was brought by 14 same-sex couples and two men whose partners had died.
- ▶ Rooting its decision the line of fundamental right to marry cases, the Court held that the well-established constitutional rule that marriage is fundamental applies with “equal force to same-sex couples” based on four essential principles.
- ▶ In so holding, the Court rejected the argument made by the defending states that the plaintiffs were not seeking to “exercise the right to marry but rather a new and nonexistent ‘right to same-sex marriage.’”
- ▶ The Court thus made clear that there is but a single category of marriage that includes both heterosexual and same-sex couples alike.

Restrictions upon Entry into Marriage

Some common marriage restriction laws include:

- ▶ Criminal incest laws
- ▶ Prohibitions on multiple marriages
- ▶ Marital age restrictions

Do all states have bigamy or polygamy laws?

Yes. All states prohibit a person from having more than one spouse at a time. The term bigamy describes the situation where a person enters into a second marriage while his or her first marriage is still in effect.

The term polygamy applies to the situation where an individual (most commonly a man) has multiple spouses at the same time. A marriage contracted in violation of the “more than one spouse at a time” prohibition is void and may subject the participants to criminal prosecution.

Marriage Formalities: Procedural Requirements

- ▶ Marriage license
- ▶ Blood tests
- ▶ Waiting periods
- ▶ Ceremony performed by an authorized person
- ▶ Recording of marriage license

Common Law Marriage

- ▶ A **common law marriage** is created by the conduct of the parties in the absence of a formal ceremony.
- ▶ A well-established English practice, most American colonies accepted common law marriage as a practical reality in a new country whose scattered populace made access to religious and civil officials difficult.
- ▶ Modern definition of common law marriage is the voluntary union of two persons, as spouses, to the exclusion of others.

Common Law Marriage

- ▶ Establishment of a valid common law marriage requires three elements:
 - ▶ A mutual agreement to become spouses
 - ▶ Cohabitation
 - ▶ Reputation in the community as spouses

Legal Changes and Benefits that Come with Marriage

- ▶ Each partner becomes formally connected to the family of the other
- ▶ The right to a range of third-party benefits
- ▶ The legal obligation of each spouse to support the other
- ▶ Formal process for dissolving the relationship, with rights to property and support

Legal Recognition of Nonmarital Couples

- ▶ Although certainly not nearly as controversial as was the struggle for marital rights for same-sex couples, the extension of legal rights to unmarried couples has nonetheless triggered debate.
- ▶ In 1976, in the landmark case of *Marvin v. Marvin*, the door to the courthouse was opened for the first time to cohabiting partners seeking to sort out their affairs upon the dissolution of a relationship.

The *Marvin* Decision

- ▶ The doctrine of **severability**—the court found a way to enforce the parties' legitimate expectations without appearing to embrace nonmarital sexuality.
- ▶ **Express contracts**—the court made clear that express contracts between unmarried partners are enforceable, based on considerations of fairness.

Property Rights Upon Dissolution of a Cohabiting Relationship

- ▶ States continue to draw clear lines between marriage and cohabitation; however, in contrast to the past when the courthouse door was shut to cohabiting couples, virtually all states allow a partner to seek support and property rights upon the dissolution of a cohabiting relationship.
- ▶ Recovery is typically rooted in contract theories.

Contracts

- ▶ Most couples do not sit down and negotiate a contract regarding the support and property rights they will have if they break up.
- ▶ Courts therefore often infer agreements based on the conduct of the parties during their relationship.
- ▶ In contract parlance, an agreement that is inferred from conduct is referred to as an **implied-in-fact contract**.
- ▶ In the context of cohabitation, a court might find an implied agreement to share accumulated assets because a couple made purchases from a shared account or commingled their possessions.
- ▶ Some courts might also consider a partner's nonfinancial contribution (e.g., homemaking services) that preserves and enhances the value of the couple's property as evidence of an intent to share in the accumulation.