



Domestic Relations

Lecture 04

Prof. Marvin L. Longabaugh

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Other Issues Relevant to Property Rights and Marriage

- **Post-Nuptial Agreements**
 - Same basic idea as prenuptial agreements, but they are signed after the marriage instead of before it. They can also update or extend a pre-existing prenuptial agreement.
- **Breach of Promise to Marry**
 - Many states don't even allow these, since forcing people to marry is against public policy.
 - Those states that allow these suits will allow recovery of money spent in anticipation of the marriage (such as wedding expenses) only.



Other Issues Relevant to Property Rights and Marriage

- **Property given in anticipation of marriage**
 - Can a gift that was given because of a pending marriage be recovered by the donor if the marriage becomes called off?
 - Majority position: Yes, no matter who calls off the wedding! (but only if it can be shown that the gift was solely based on the assumption of marriage).
 - Minority positions:
 - Yes, only if the marriage was broken off by the donee.
 - Not under any circumstances.



Cohabitation Agreements

- These, in essence, are like pre-nuptial agreements, except that they apply to unmarried couples (usually, who live together).
 - Old Rule: Cohabitation agreements were unenforceable, because supporting these relationships was against public policy.
 - New Rule: Because of the general societal acceptance of cohabitation, such agreements will be allowed and will be treated in the same manner as other contracts.
 - Note: A few states (including Georgia, Indiana and Illinois) seem to still abide by the old rule.



Cohabitation Without Formal Agreement

- What if parties live together and support each other without formal marriage (so the rules of equitable distribution, etc. don't apply)?
 - Note: A court will never consider a sexual relationship to be something "given" by one party, thus requiring compensation. In addition, to the extent that the court feels that sex is the consideration for any written agreement, it will not enforce it!



Witness For The Prosecution (1957)

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Cohabitation Without Formal Agreement

- Contract concepts that can help parties receive compensation as part of a cohabitation relationship:
 - **Express or implied contract** between the parties.
 - *Quantum Meruit* – avoiding unjust enrichment.
 - **Constructive Trust**
 - A court may determine that one person in a cohabitation relationship is holding property that really belongs to the other party.
 - In this case, the court will infer that the holding party is actually holding it only in trust for the other party.
 - **Resulting Trust**
 - Usually applies when a third party's gift to one party is being held by the other party.



Cohabitation Issues Still Unclear

- Tort Law
 - An unmarried domestic partner can sue the other partner in tort (e.g., injuries in an automobile accident) while a spouse cannot.
- Probate Law
 - An unmarried surviving domestic partner cannot typically inherit from their partner via *intestacy*; a spouse can and does.
- Discussion Topic
 - What if two former domestic partners live in different states at the time of the cause of action? Can they sue in ***federal court*** in a diversity action?
 - “We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony...”
 - *Barber v. Barber*, 62 U.S. 582, 584 (1859)
 - This policy has been understood to apply to meretricious relationships as well.



Quick Quiz



Marvin v. Marvin

18 Cal. 3d 660, 557 P.2d 106 (Cal. 1976)

• Facts

- Plaintiff (Michelle) and defendant (Lee), who was already married, lived together for seven years without marrying, with all property acquired during this time taken in defendant's name.
- Plaintiff avers that she and defendant entered into an oral agreement where the parties would combine their efforts and earnings and share equally all property accumulated as a result of their efforts.
- Plaintiff agreed to give up a lucrative career as a singer and entertainer and assume the role of homemaker, with defendant agreeing to provide for all of plaintiff's financial support.
- Defendant compelled plaintiff to leave his household in May of 1970, and continued to provide support to her until November of 1971.
- Thereafter, he refused to provide further support. Plaintiff brought suit to enforce the oral agreement, claiming that she was entitled to half the property and to support payments.
- The trial court granted judgment on the pleadings for the defendant.
- Due to various appeals and remands, this case was actually heard by the California Supreme Court **three** times!



Marvin v. Marvin

18 Cal. 3d 660, 557 P.2d 106 (Cal. 1976)

- **Issue**

- Did the trial court err in granting defendant judgment on the pleadings?

- **Holding**

- The trial court erred in granting defendant judgment on the pleadings because the plaintiff's complaint states a cause of action for breach of an express contract, and can be amended to state a cause of action independent of allegations of express contract.
- Defendant first and foremost claims that the alleged contract should not be enforced because it violates public policy due to its close relationship to the immoral character of the relationship between plaintiff and defendant.
- However, a contract between nonmarital partners is unenforceable only to the extent that it explicitly rests on the consideration of meretricious sexual services.
- Courts should look to the consideration underlying such agreements to determine their enforcement.



Marvin v. Marvin

18 Cal. 3d 660, 557 P.2d 106 (Cal. 1976)

- **Holding**

- Defendant secondly claims that the contract violated public policy because it impaired the community property rights of Betty Marvin, his lawful wife.
- However, there is no reason that enforcement of the contract between plaintiff and defendant against property awarded to defendant by the divorce decree will impair any right of the lawful wife; therefore it is not against public policy.
- Defendant next contends that enforcement is banned by civil code requiring all contracts for marriage settlements to be in writing.
- However, a marriage settlement is an agreement in contemplation of marriage, and the present contract does not fall within this definition.
- Previous precedent has held that the Family Law Act suggests that property accumulated by nonmarital partners in an actual family relationship should be divided equally.



Marvin v. Marvin

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- **Holding**

- Although courts have generally not recognized the fact, common law principles hold that implied contracts can arise from the conduct of the parties.
- Courts have allowed partners to retain a proportionate share of funds or property contributed to a relationship, but have disallowed such an interest based on contribution of services.
- Because the Family Law Act is intended to eliminate fault as a basis for dividing marital property, implied contractual claims should be allowed in nonmarital relationships.



Marvin v. Marvin

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- **Explanation**

- The California court found that partners in nonmarital relationships may bring claims for property division based on both express and implied contracts.
- The Court examined how the distribution of property acquired in a non-marital relationship should be governed.
- The court allowed not only plaintiff's claim that an express contract existed and should be enforced, but also found that implied contracts may be found in such situations.



End Of Class Review Quiz

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**THE
BIG
QUIZ**



The End

