



# Domestic Relations

## Lecture 06

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# Common Law Marriage

- Some states allow couples to be considered married without any solemnization or licensing.
  - **Elements**
    - Couple must have lived together for a significant period of time.
    - The couple must act in a manner that connotes to the World that they are married.
    - The couple must intend to be married.
  - Couples who are married via common law marriages have the exact same rights and responsibilities as do couples who have valid marriages.
  - Under the “full faith and credit” rule, states will recognize as married couples that had common law marriages in other states.
- **Important Principle:** Courts **do not like to rule** that couples who lived together for decades were never married and will use common law marriage to avoid that kind of ruling wherever possible.



## ***PNC Bank v. Workers' Comp Board (Stamos)***

- A court in Pennsylvania ruled that it would not, prospectively, recognize any common law marriages.
- This led to the Pennsylvania legislature abolishing all common law marriages entered into after January 1, 2005.
- The reasoning behind this change is interesting:
  - The court was struck by “a system that allows the determination of important rights to rest on evidence fraught with inconsistencies, ambiguities, and vagaries.”
  - Many litigants tend to view common law marriage as “something rather like a legal raincoat they can put on and take off as changing circumstances dictate.”
  - A couple may hold themselves out as married for one purpose such as when applying for benefits, or as single for other purposes.
  - The court did not want to “place its imprimatur on a rule which [seemed] to be a breeding ground for such conduct and its attendant disrespect for the law itself.”
- **Couldn't this problem be solved more simply with a state registry for common law marriages?**



# Recognition of Common Law Marriages From Other States

- A brief survey of cases involving foreign common law marriages by residents of states that no longer permit such marriages has revealed four main approaches to the problem:
  - (1) **nonrecognition in any case** (the Illinois rule);
  - (2) recognition if the couple had **sufficient contacts with the common law state** and met that state's requirements for such a marriage (the New Mexico rule);
  - (3) recognition if the couple **met the common law state's requirements for such a marriage while present in that state** (the Connecticut rule); and
  - (4) recognition if the couple **met the common law state's requirements** for such a marriage with reference to the couple's conduct **in that state and in the state of residence** (the New York rule).
- **Important Note: There is no such thing as “common law divorce”. Once a couple is married by common law, they can only be divorced by a court!**



# Same Sex Marriage

- The Supreme Court has ruled that the due process clause of the 14<sup>th</sup> Amendment prevents states from criminalizing homosexual sex between consenting adults. *Lawrence v. Texas* (2003).
- And then came *Obergefell v. Hodges*, 135 S. Ct. 2584 (U.S. 2015).



# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Facts**

- The plaintiffs in this case were fourteen same-sex couples, and two men whose same-sex partners were deceased at the time of this ruling.
- James Obergefell was one of these plaintiffs.
- The named defendant, Richard Hodges, is the Director of the Ohio Department of Health.
- Ohio, Michigan, Kentucky, and Tennessee defined marriage as a union between one man and one woman and did not recognize same-sex marriages.
- The plaintiffs challenged these laws under the Fourteenth Amendment to the United States Constitution by filing lawsuits in federal district court in their home states.
- The plaintiffs argued that the Fourteenth Amendment required the States to allow same-sex marriage and to recognize the validity of such marriages performed in other jurisdictions.



# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Facts**

- In each case, the federal district courts ruled in favor of the plaintiffs.
- On appeal, the Court of Appeals for the Sixth Circuit consolidated the cases and reversed the rulings. The plaintiffs appealed to the Supreme Court of the United States.



# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Issues**

- Do same-sex couples have the right to marry in every State?
- Must the States grant marriage licenses to same-sex couples?
- Must the States recognize same-sex marriages that have been licensed and performed lawfully out-of-State?

- **Holding and Rule of Law (Kennedy)**

- Yes. The Fourteenth Amendment requires that same-sex couples have the right to marry in every State.
- Yes. The Fourteenth Amendment requires that the States must license marriages to same-sex couples.
- Yes. The Fourteenth Amendment requires that the States must recognize same-sex marriages that have been licensed and performed lawfully out-of-State.





# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Explanation**

- The Supreme Court reasoned that the history of marriage is marked by both continuity and change. Changes such as the abandonment of the law of coverture and the decline of arranged marriage have affected aspects of marriage that were once seen as essential. These new insights and changes in understanding have strengthened marriage, not weakened it.
- Over the last few decades, political, legal, and cultural developments and shifts in public attitudes have made it possible for same-sex couples to enjoy more open and public lives. For example, in the 2003 case ***Lawrence v. Texas***, the Supreme Court overruled the 1986 case *Bowers v. Hardwick* which had upheld a Georgia law that criminalized homosexual conduct. The Court in *Lawrence v. Texas* held that laws that made same-sex intimacy a crime demeaned the lives of gay people and were unconstitutional.



# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Explanation**

- The Due Process Clause of the Fourteenth Amendment protects fundamental liberties including personal choices central to individual dignity and autonomy. These liberties include personal choices defining an individual's identity and beliefs.
- The Supreme Court has long held the right to marry is protected by the Constitution. For example, in *Loving v. Virginia*, the Court invalidated bans on interracial marriage. In determining whether the same legal reasoning should apply to same-sex marriage, the Court must respect the fundamental reasons for protecting the right to marry in other cases. The Supreme Court held that this analysis led to the conclusion that same-sex couples must have the right to marry.



# Obergefell v. Hodges

135 S. Ct. 2584 (U.S. 2015)

- **Explanation**

- The Supreme Court held that the right to marry is a fundamental right inherent in the liberty of the person. Same-sex couples may not be deprived of that right and that liberty under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The State laws challenged by the plaintiffs in these cases are held invalid insofar as they deny same-sex couples the rights to marriage that are enjoyed by opposite-sex couples.



# Same Sex Marriage

- **Federal “Defense of Marriage Act” (DOMA)**
  - This specifically told the states that they do not have to recognize the same sex marriages of other states. This act had little effect, because:
    - DOMA defined “marriage,” for purposes of over a thousand federal laws and programs, as a union between a man and a woman only.
    - In 2013 the Court ruled, in *United States v. Windsor*, that substantial parts of that law are unconstitutional.
    - The Court explained that the states have long had the responsibility of regulating and defining marriage, and some states have opted to allow same-sex couples to marry to give them the protection and dignity associated with marriage.



# Same Sex Marriage

- **Federal “Defense of Marriage Act” (DOMA)**
  - By denying recognition to same-sex couples who are legally married, federal law discriminates against them to express disapproval of state-sanctioned same-sex marriage.
  - This decision means that same-sex couples who are legally married must now be treated the same under federal law as married opposite-sex couples.



# Quick Quiz



# Common Law Marriage Problem

- Julian marries Bernice in 1943, separates from her in 1953 and divorces in 1981.
- He lives with Louisa in California and Nevada from 1961 until his death in Nevada in 1993.
- Although they never celebrate a marriage ceremony, Louisa uses the name “Mrs. Orr.”
- They hold themselves out as husband and wife.
- Julian and Louisa visit Texas several times, the longest trip being two weeks, to visit Louisa’s relatives.
- Although neither California nor Nevada recognize common-law marriages, Texas does.
- At Julian’s death, Louisa claims Social Security Survivor benefits as his legal spouse. Will she be successful?



# Common Law Marriage Answer

- Yes.
- Louisa is entitled to benefits as the decedent's common-law spouse.
- A valid common-law marriage came into existence after 1981 (when Julian was divorced from Bernice) based on the couple's visits to Texas.
- The couple cohabited and held themselves out as husband and wife (implying that their conduct indicated that they had a present agreement to marry).





# End Of Class Review Quiz

**THE  
BIG  
QUIZ**



# The End

