

# Examples and Explanations

## Family Law, Second Edition, Oliphant & Ver Steegh

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Publisher page limitations in the second edition restricted the amount of material and number of problems that we could share with student readers. However, the web provides us with the opportunity to provide more expansive explanations of the law to in the chapters and to add more problems for review and reflection. We believe that the additional explanatory material and problems will further enhance a student's ability to master family law and provide an added intellectual boost when preparing for final family law examinations.

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### **Chapter 2, Section .4-- Capacity – Age Restrictions**

**2.4(a) EXAMPLE:** Assume that a state statute set the age to marry without parental consent at 18 for girls and 19 for boys. Paul, age 18, wants to marry Patty, age 18, but Paul's parents refuse to consent to the marriage. Paul challenges the state statute on gender grounds. Most likely, how will a court rule?

**EXPLANATION:** There has been a long-standing gender difference in this society between the age when boys and girls may marry. The common law allowed girls age 12 and boys age 14 to marry. That distinction was carried from the common law and placed in an altered form into most early state marriage statutes. States retained in their early statutes the gender distinction. However, the Supreme Court in *Stanton v. Stanton*, 421 U.S. 7 (1975) held that there was no "compelling State interest which justifies treating males and females of the same age differently for the purpose of determining their rights to a marriage license. In this example, the statute would be struck down because of the gender difference and Paul would most likely be able to marry Patty.

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**2.4(b) EXAMPLE:** Assume that Juanita and Pablo desire to marry. Juanita is age 15 and Pablo is age 18. The jurisdiction where they intend to marry has abolished common law marriages and has adopted §§ 203-204 of the Uniform Marriage and Divorce Act (UMDA). The UMDA allows a minor age 15 to 17 to marry with either parent's consent or after a finding that the minor is capable of assuming the responsibilities of marriage and that the marriage would be in the minor's best interests. Both Juanita's and Pablo's parents are also opposed to the marriage. Despite the opposition, Juanita and Pablo petition the juvenile court for permission to marry. At the juvenile court hearing, evidence is introduced

indicating that Juanita is not pregnant, she proposed that the two marry, she lives with her parents, and is regularly attending high school as a sophomore. The evidence also indicates that Pablo recently graduated from high school and has a full-time job at a local fast food restaurant. He has his own apartment and owns an older model car. He has no outstanding debts. He stated he wanted to get married because he loved Juanita and she wanted to get married. Most likely, how will a court rule on the request to allow the couple to marry?

**EXPLANATION.** Under English common law, children below the age of seven were incapable of marrying. After that age they could marry, but the marriage was voidable until they became able to consummate it, which the law presumed to be at age fourteen for males and twelve for females. 1 Homer H. Clark, Jr., The Law of Domestic Relations in the United States § 2.1 (2d ed. 1987). The court will consider whether both applicants understood or appreciated the duties and responsibilities of married life. Studies indicate that teenage marriages have a high rate of instability; teen marriages lead to decreased educational attainment for girls; and teen fathers earn less in early adulthood than males who delay parenting until after age 20. A court may consider the fact that Juanita had proposed marriage to Pablo, and to some extent, he may appear gallant in accepting the proposal. The opposition of both families to the marriage, the fact that Juanita is not pregnant, and Pablo's current employment all suggest that granting a marriage at this time is not in Juanita's best interests. Most likely, the court will not allow the marriage.

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**2.4 (c) EXAMPLE.** Toursa and Tony decide to marry. Toursa is 21 and has recently inherited a large sum of money and extensive real estate. Tony is 14. Both families approve of the marriage. The jurisdiction where they intend to marry has abolished common law marriages and has adopted §§ 203-204 of the Uniform Marriage and Divorce Act (UMDA). The UMDA allows a minor age 15 to 17 to marry with either parent's consent or after a finding that the minor is capable of assuming the responsibilities of marriage and that the marriage would be in the minor's best interests. Tony lies about his age in order to obtain a marriage license and the two are married in a public marriage ceremony. On their honeymoon, they are involved in a serious automobile accident and Toursa dies. Tony now seeks his portion of her estate as her husband. The administrator of the estate contends he is not entitled to any of the estate because Toursa was never legally married to Tony. Most likely, how will a court rule?

**EXPLANATION.** A court will most likely rule in favor of the administrator. Common law marriages were abolished and there is no statutory authority allowing the marriage. The relationship is void. If Toursa had survived the car accident, it is possible that she would face criminal sexual misconduct charges.

**2.4(d). EXAMPLE.** Assume that Alice, age 16, wants to marry Teddy, her 28-year-old high school civics teacher. Assume that the state where Alice and Teddy cannot marry in the state where they are living because it prohibits marriages on any basis of persons under age 17. After consulting a lawyer, Alice, Teddy, and Alice's mother drive to Las Vegas where they establish a legal basis to seek a marriage license. Assume that the relevant statute reads as follows: "A court is authorized to permit a marriage of a person under 16 years old with consent of only one parent, in extraordinary circumstances in which

marriage would serve best interests of minor.” Alice’s mother submits an affidavit in support of the marriage. It reads: that she has “seen no other couple so right for each other,” that they “have very real life plans at home, in the town in which we all reside,” and that “[t]heir partnership and their talents will be most effectively utilized by this marriage.” They obtain a court order, which allows them to marry if one parent agrees to the relationship. They are married with Alice’s mother consent. When they return to their home state, Alice’s father is outraged and seeks to annul the marriage on the ground. He argues that, because the statute allows the court to approve the marriage of a person under the age of sixteen with the consent of only one parent, he has been deprived of his fundamental right to the parent-child relationship without a compelling reason. He also argues that his procedural due process rights were infringed because he was not provided with notice, with an opportunity to be heard, or with an opportunity to object to his daughter’s marriage before the court authorized it. Most likely, how will a court rule?

**EXPLANATION.** When a similar problem came to the Nevada Supreme court, it held that a statute that allowed a court to authorize marriage of a person under 16 years old with consent of only one parent, in extraordinary circumstances and where the marriage would serve best interests of minor, did not violate substantive or procedural due process rights of father. It also ruled that the father lacked standing to seek annulment of marriage. *Kirkpatrick v Eighth Judicial Dist. Court*, 64 P.3d 1056 (Nev. 2003). In the opinion the court observed that that states have the right and power to establish reasonable limitations on the right to marry. This power is justified as an exercise of the police power, which confers upon the states the ability to enact laws in order to protect the safety, health, morals, and general welfare of society. It also observed that there is “no one set of criteria that can be set forth as a litmus test to determine if a marriage will be successful. Neither is there a litmus test to determine whether a person is mature enough to enter a marriage. Age alone is an arbitrary factor. The Nevada Legislature recognized that although most fifteen-year-olds would not be mature enough to enter into a marriage, there are exceptions. Nevada provided for the exceptional case by allowing a fifteen-year-old to marry if one parent consents and the court approves. The statute provides a safeguard against an erroneous marriage decision by the minor and the consenting parent, by giving the district court the discretion to withhold authorization if it finds that there are no extraordinary circumstances and/or the proposed marriage is not in the minor’s best interest, regardless of parental consent. The statute strikes a balance between an arbitrary rule of age for marriage and accommodation of individual differences and circumstances.” *Id at 1060-1061.*

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