

# 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 38: Maryland High Court and Iowa Trial Court rule on Same-Sex Marriage Bans***

#### **Maryland Uphold Ban on Same-Sex Marriages**

In *Conaway v. Deane*, --- A.2d ----, 2007 WL 2702132, Md. (September 18, 2007), same-sex couples brought action against the circuit court clerks, seeking a declaration that the state statute prohibiting marriage licenses to be issued to same-sex couples was unconstitutional. The Maryland Court of Appeals, in a 4-3 decision, held that Maryland's 1973 ban on same-sex marriage does not discriminate on the basis of gender and does not deny any fundamental rights guaranteed by the state constitution. The court also found that the state has a legitimate interest in promoting opposite-sex marriage. Specially, the court held that: (1) the Maryland statute prohibiting same-sex marriages did not draw an impermissible sex-based distinction in violation of the Maryland Equal Rights Amendment (ERA); (2) sexual orientation was not a suspect or quasi-suspect classification, for purposes of equal protection challenge to statute under Maryland Declaration of Rights; (3) the right to marry another person of the same sex was not a fundamental right protected by the due process provision of Maryland Declaration of Rights; and (4) rational basis existed for statute prohibiting same-sex marriages.

#### **Iowa District Court rules same-sex marriage laws unconstitutional**

August 30, 2007, In *Varnum v. Brien*, a Polk county Iowa district court judge ruled that Iowa's statute prohibiting same-sex marriage violates due process and equal protection and has no rational relationship to a legitimate government objective. The 62-page decision on a motion for summary

judgment may be useful for examining in the academic setting the many arguments that are related to same-sex marriage. The county immediately filed a motion for a stay from the trial judge, which was apparently granted. You may find the entire opinion at the following web site:

<http://www.kcci.com/download/2007/0830/14014918.pdf>