

Examples and Explanations

Family Law, Second Edition, Oliphant & VerSteegh

Page limitations in the second edition placed a natural practical limitation on the number of problems that we could share with student readers. However, the web provides us with the opportunity to supplement several of the sections in the Examples and Explanation book. We believe that these new 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.

Please read the introductory material for each section before you begin work on the following additional problems.

Note: This material is available only to a student who has purchased the first or second edition of the Family Law Examples and Explanations book. It may not be copied or reproduced in any form without the express written consent of authors. Students who have purchased the second edition may, of course, download and print out this supplemental material for their individual use.

DOWNLOAD #3, June 5, 2007: 2.13 Common Law Conflicts of Law

EXAMPLE. Assume that Jackie and John reside in a jurisdiction that does not recognize common law marriages. They consider themselves husband and wife and John gives Jackie wedding anniversary gifts. They cohabit together and Jackie has taken John's surname. Their friends are all told they are married. Each year they visit a state that does recognize common law marriages for a three week vacation. During these visits, they cohabit together and hold themselves out as a married couple to their families and friends. When John dies, Jackie seeks his intestate share of his estate as his wife. Will a New York court recognize the out-of-state common law marriage?

EXPLANATION. The forum where Jackie lives may apply the rule of Lex Loci, unless there is strong public policy against its application. Under this rule, a marriage valid where performed is valid everywhere. Many courts have indicated that they will recognize common-law marriages consummated in another state, even though such marriages cannot be consummated in the forum state. *Mission Ins. Co. v. Industrial Comm'n*, 559 P.2d 1085 (Ariz. 1976); *Jennings v. Jennings*, 315 A.2d 816 (Md. 1974); *Gallegos v. Wilkerson*, 445 P.2d 970 (N.M. 1968). Many of these decisions, however, involve a situation where the common-law marriage was consummated while the parties were residents of the common-law state rather than residents of the forum state. Only a few courts have actually held that residents of a state, which prohibits common-law marriages, may temporarily leave the state without taking up a new residence and consummate a common-law marriage elsewhere. See, *Lieblein v. Charles Chips, Inc.*, 32

A.D.2d 1016, (N.Y. 1969), affirmed 271 N.E.2d 234 (N.Y. 1971). On the other hand, a few courts have indicated they will not recognize common-law marriages consummated while residents temporarily leave the state, where the law of the state invalidates common-law marriages. *See, Metropolitan Life Ins. Co. v. Chase*, 294 F.2d 500, 503 (3d Cir. 1961) (applying New Jersey law); *Peirce v. Peirce*, 39 N.E.2d 990 (Ill. 1942); *Winn v. Wiggins*, 135 A.2d 673 (N.J. Super 1957). This is especially true if there is a state statute which expressly invalidates common-law marriages entered into by residents while living temporarily in another state. *In re Vetas' Estate*, 170 P.2d 183 (Utah 1946); *In re Van Schaick's Estate*, 40 N.W.2d 588 (Wisc. 1949). In a decision on facts similar to those in the hypothetical, the Second Circuit held that a New York resident claimant for social security benefits entered a common-law marriage with decedent, under Pennsylvania law, during their travels through that state, which last 16 days, and was entitled to widow's insurance benefits. The court was persuaded that a common law marriage occurred, despite their short stays, because they cohabited during entire time they were there and held themselves out as husband and wife to every individual they knew that they saw in Pennsylvania. The key to explaining the hypothetical is to uncover the social policy of the state and weigh it against recognition of the common law marriage.