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Book Reviews: Unmarried Couples and the Law

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BOOK REVIEWS

UNMARRIED COUPLES AND THE LAW. By Graham Douthwaite. The Allen Smith Company, Indianapolis, Indiana. 1979. Pp. 696. Reviewed by Ann McKenrick Turnbull.†

Professor Douthwaite¹ begins his treatise with the following statement of its purpose:

The purpose of this treatise is to present a contemporary picture of the extent to which the various states, and in some instances the nation as a whole, are adjusting the law to fit the need of a society in which legal marriage no longer enjoys the prime role it once played in determining the reciprocal rights and duties of cohabiting partners and their offspring.²

He succeeds in accomplishing this purpose to the extent that *Unmarried Couples and the Law* presents an overview of both state and federal law responsive to the changing mores of our society. The reader should bear in mind, however, that because family law is rapidly changing, this treatise cannot be relied upon as definitive of the law in any one jurisdiction.

Following a brief first chapter discussion of the sociology of marriage vis-à-vis other life styles, the author in chapter two undertakes a more detailed, issue-by-issue approach to the law. This chapter examines the legal ramifications of the unmarried status as applied to a wide range of family law issues, including the right to federal benefits, employment discrimination, the right to privacy, insurance problems, the rights of homosexuals, and potential criminal liability for the unmarried couple. Although the chapter is titled "Ramifications of the Unmarried Status," it deals as much with the rights of married individuals as it does with the rights of unmarried individuals. The chapter by no means presents an in-depth analysis of any one issue, but it does offer a good synopsis of watershed cases and legal theories reflecting changing social attitudes.

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1. Douthwaite is a professor at the University of Santa Clara School of Law.
2. UNMARRIED COUPLES AND THE LAW at 2.

Professor Douthwaite singles out three issues for a more thorough analysis in chapters three, four, and five. Chapter three examines the status afforded to children born to the unmarried couple. This examination includes a review of the rights of inheritance, support, custody, adoption, and paternity.

Chapter four, "Rights to Accumulated Property and Value of Services Rendered During Cohabitation," examines a highly controversial area of the law. The *Marvin* case, because of its glamorous parties and setting, focused national attention on the legal problems that beset unmarried couples who subsequently go their separate ways. This chapter covers all of the legal theories that were utilized both successfully and unsuccessfully in *Marvin v. Marvin*.³ express contract, contract implied-in-fact, quasi contract, constructive trust, resulting trust, rights based on analogy to partnership or joint venture, and inherent equity powers. Cases throughout the country are cited in the footnotes as are A.L.R. annotations and law review articles. In addition, three appendices to Professor Douthwaite's treatise reprint the complaint that was filed by Michelle Marvin against Lee Marvin in the Superior Court of the State of California for the County of Los Angeles, the opinion of the Supreme Court of California in *Marvin v. Marvin*,⁴ and the memorandum opinion of the superior court⁵ issued on remand from the supreme court. This material, while available elsewhere, is valuable as a starting point for the lawyer confronted with an alienated unmarried couple.

Chapter five on "Marital Status and Taxes" was written by a different author, Mary Moers Wenig, Professor of Law at the University of Bridgeport School of Law. This long and complex chapter provides a didactic approach to the many tax consequences of marriage, divorce, and cohabitation. Once again, this chapter has as much to do with the rights of married individuals as it does with the rights of unmarried individuals.

The final chapter in the book, entitled "State-by-State Commentary," actually comprises nearly two-thirds of the text. Covering the fifty states and the District of Columbia, this chapter surveys state law regarding a variety of subjects, ranging from adoption by unmarried couples to rights of cohabitants.

The section on Maryland law, while providing a starting point for the practitioner, is out-of-date in several respects. For example, a subsection on sexual misconduct as grounds for modification of

3. 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976).

4. *Id.*

5. *Marvin v. Marvin*, No. 79-C 23303 (Super. Ct. Cal. Apr. 18, 1979).

alimony predates *Meyer v. Meyer*,⁶ which held that sexual "misconduct" following divorce has no bearing on a former wife's right to continue to receive alimony. In the area of the *Marvin*-type case, the section also predates the first such case to have been decided in Maryland, *Boyles v. Boyles*.⁷ The Court of Appeals of Maryland granted a writ of certiorari prior to consideration by the court of special appeals. The case was argued in September 1980 but was settled and dismissed before an appellate decision was rendered. The Circuit Court for Caroline County in the *Boyles* case had rejected each alleged cause of action by the "wife" who had lived with the "husband" for thirty-seven years. It remains for the court of appeals to define what, if any, rights unmarried cohabitants have under Maryland law.

In general, the topic with which this treatise deals is a topic of growing significance in family law, and one desperately in need of a book such as this. *Unmarried Couples and the Law* provides a catalogue of annotations on a wide variety of family law issues. The only caveat is that the statement of the law in any one area, particularly in the state-by-state commentary, inevitably needs constant updating. So long as the treatise is considered a starting point rather than a final authority, it can be extremely useful to the practitioner who must chart his or her way in an unfamiliar sea.

6. 41 Md. App. 13, 394 A.2d 1220 (1978).

7. No. 14 Sept. Term 1980 (Ct. App. Md. Mar. 13, 1981).