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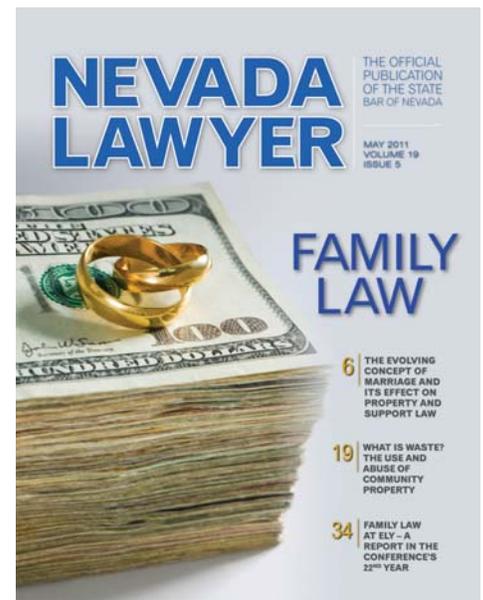
THE EVOLVING CONCEPT OF MARRIAGE

AND COMING CONVERGENCE
OF MARITAL AND NON-
MARITAL PROPERTY
AND SUPPORT LAW

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INTRODUCTION: “FAMILIES” AND LAW

It is no secret that the development of law tends to lag behind real life by a period of years to decades. So it is not surprising that demographic shifts have altered what was previously thought of as “marriage” and “family,” and what elements are, and should be, in play in the dissolution of marital and non-marital relationships.

In modern America, millions of households consist of unmarried cohabitants, both with and without children, and consisting of both opposite-sex and same-sex couples. According to the government, one-third of all children in the United States reside with only one biological parent.¹ Some sources indicate that in Europe, the majority of children grow up in households without two natural, married parents.

The concept of what constitutes a “family unit” appears to be more a matter of decision than empirical fact, and is so fluid that the label is of very little value as a legal test, especially over time.² Popular conceptions are fickle, and as the gay marriage debate goes on, some demographers have observed that portions of the population see arbitrary and logically unsupportable distinctions, such as recognizing opposite-sex couples as a family, whether or not they have children, but same-sex relationships as a family when children are present, but not otherwise.³

These changing demographic realities and perceptions are important, because the legal concepts of property ownership, and of support obligations, derive from underlying assumptions about what relationships “merit” recognition of co-ownership of assets acquired, or of possible claims to support should the relationship terminate. If legal tests and remedies do not keep some pace with the reality of living arrangements, family law runs the risk of becoming a source of unfairness, rather than a mechanism for achieving equity.⁴

All trends point toward an increase in cohabitant cases. A February, 2011, survey of the American Academy of Matrimonial Lawyers revealed that nearly half of them have noted a spike in the number of suits between former cohabitants, and 39 percent noted an increase in the number of cohabitation agreements between live-in couples – mostly for opposite-sex couples. Both the frequency of suits between cohabitants, and the prevalence of agreements intended to head off such suits, are increasing dramatically.

This article does not purport to be a comprehensive cataloging of either demographic trends or the law governing marriage, divorce, cohabitation, property, and support. Rather, it intends to identify some of the paths those disparate matters are tracing, with the objective of helping Nevada lawyers and judges increase the likelihood of achieving substantial justice for individuals in a variety of relationships who find themselves engaged with the legal system.

CLASSICAL NOTIONS AND RAMIFICATIONS OF MARRIAGE

Marital or Community Property Measuring Periods Generally

Common law marriage⁵ was widespread from Colonial times through the nineteenth century, when state regulations more consistently required a license from the state and some ceremonial proceeding before a marriage was recognized under law.

In previous years, it was relatively simple, in most places, to determine whether property was accrued by a single person or a couple. The period of joint acquisition started with a marriage, either common-law or ceremonial, and depending on the law of the jurisdiction, ended upon final separation,⁶ filing and service of a complaint for divorce,⁷ or a divorce trial or decree.⁸

In a minority of places, marriage was considered more transformative as to property. Giving literal meaning to the words “with all my worldly goods I thee endow,” the “hotchpot” jurisdictions⁹ placed all property of both spouses, whether accrued before or during marriage, at least theoretically before the court for distribution upon divorce.

Whatever timing focus or distributive scheme, family courts have long been accustomed to having fixed measuring points for determining what property could be considered belonging to a couple and distributing it between them in accordance with the relevant state’s rules for property distribution upon dissolution.

The Nevada Law of Marriage and Putative Marriage

In Nevada, the critical elements of a common-law marriage were:

- 1) “Present assent, between parties capable of contracting marriage;”
- 2) Followed by “subsequent cohabitation as husband and wife;” and
- 3) “And the holding out to the world of each other as such.”¹⁰

As discussed below, some of these elements have rather sloppily leaked into evaluation of cohabitation cases, causing much unnecessary confusion.

Nevada’s first statutes were passed in 1861, styled the “Laws of the Territory of Nevada.” They were passed at the first regular session of the territorial legislative assembly, which convened from October 1 to November 29, 1861, in Carson City, and laid the groundwork for a body of laws to be enacted upon entry into the Union.

That first legislative set fell into line completely with the conceptualization of marriage as determined by the mid-19th century, and declared: “That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.” The early case law opined that Nevada’s adoption of a statutory, regulated procedure for marriage was presumed to be **in addition** to the tradition of common-law marriage.¹²

In 1943, the Nevada Legislature did away with common-law marriage, adding a sentence to the definition of marriage that had existed since the original Territorial Statutes: “Consent alone will not constitute marriage; it must be followed by solemnization as authorized and provided by this chapter.”¹³ But existing common-law marriages remained valid; the new provision applied only to marriages contracted after the date of enactment.

In the 1948 *Wolford* case,¹⁴ the husband alleged that he was still married to another at the time he entered into the marriage ceremony with the wife, although at that time he thought his earlier wife was dead. He requested an annulment and half of the property. The district court granted the annulment and divided the property in half. The Supreme Court affirmed.

By the time of *Williams*¹⁵ nearly 60 years later, everyone had forgotten about *Wolford*, and neither party cited the earlier opinion, leading the Nevada Supreme Court to incorrectly believe it was dealing with “an issue of first impression.” *Williams* was, however, the first Nevada case to explicitly recognize the “putative spouse doctrine” by name in an annulment case – the kind of case in which parties live together as man and wife, often for many years, and only discover when one of them files for a divorce that there was a legal impediment to their marriage in the first place.

While stating what kind of a case *Williams* was **not**, Justice Nancy Becker stated that recognition of the putative spouse doctrine would not interfere with public policy supporting lawful marriage, after which she added the unfortunate dicta: “Nor does the doctrine conflict with Nevada’s policy in refusing to recognize common-law marriages or palimony suits.” This was not a holding, but it is problematic, because while there **is** a statutory statement of public policy in NRS 122.010 prohibiting formation of common law marriages, there is **no** such statement relating to palimony suits, in any case, statute, or court rule.

Nevada provisions empowering courts to make awards of “support of the wife and children” go all the way back to the territorial laws of 1861.¹⁷ They remained in the form of husbands paying support for wives until the whole statutory scheme was reworded in 1975, during the debate regarding the proposed Equal Rights Amendment. After that time, alimony could theoretically flow in either direction.

The basic form of the Nevada law on the subject has thus been in place for some time, and provides for five basic flavors of alimony awards:

- “Maintenance” – temporary spousal support payments made during the pendency of an action, which terminate upon entry of a final decree.¹⁸
- Temporary spousal support – a specified post-divorce award intended to terminate at a specified future time or upon a specified future event.¹⁹
- Permanent alimony – a specified post-divorce award intended to continue indefinitely, unless modified by later court order (usually upon “changed circumstances” of some sort).²⁰
- Rehabilitative alimony – a specified post-divorce award for the purpose of obtaining training or education relating to a job, career or profession.²¹
- Lump-sum alimony, which presumably requires a set aside of one spouse’s separate property to the other.²²

In practice, these categories are sometimes blurred and overlap. For example, the Nevada Supreme Court has directed entry of a temporary alimony award “at least for a period of rehabilitation” where no specific job or career training was at issue.²³ Similarly, a lump-sum award is sometimes designated as providing for temporary or permanent alimony.

NRS 125.150(1) authorizes the court to award alimony at the conclusion of a divorce case. Unless otherwise ordered by the court, alimony terminates in the event of the death of either party or the subsequent remarriage of the spouse receiving periodic payments pursuant to NRS 125.150(5). Pursuant to NRS 125.150(7), prior to the expiration of the term during which alimony is being paid, either party may file a motion for a modification of the award upon a showing of a change of circumstances.

Judicial determination of all categories of alimony are so subjective and discretionary that the subject has been described as “the last great crapshoot in family law.”²⁴ While the judiciary has criticized the legislature for not providing any objective criteria for alimony,²⁵ it also has not provided such guidance, but only reiterated “factors” to be “considered” – which were in turn rather uselessly adopted as statutory criteria.²⁶

For purposes of this examination, however, the point is that Nevada has never recognized a right to compel payment of support from one person to another except within the context of a marital relationship. In *Williams*, the court provided one exception to that bright line (despite Justice Becker’s comment to the contrary) – support payments can be ordered from one unmarried person to another unmarried person where the two parties went through a marriage ceremony, the parties apparently believed themselves to be married, and there was evidence of fraud, bad faith or bad conduct, such as cruelty, on the part of the potential obligor.²⁷

COHABITANT LAW IN NEVADA²⁸

As to Property

Starting with the sensible holding that the public policy of encouraging legal marriage would not be “well served by allowing one participant in a meretricious relationship to abscond with the bulk of the couple’s acquisitions,”²⁹ the Nevada Supreme Court issued a series of cases finding that property may be jointly acquired, and divided, even when it was accrued by parties who were not married at the time the property was acquired.

Through a process that has come to be known as “tacking,” property accrued during a period of premarital cohabitation may be divided between the cohabiting parties after they marry, and later divorce.³⁰

The same holds true for cohabiting parties when the time-line is reversed. Where parties marry, divorce, and then live together in a meretricious relationship, the property accrued by either of them during the cohabitation period may be equally divided when the relationship ends.³¹

As discussed above, the same applies when two parties think that they are married, but they are not by reason of a legal impediment making any attempted marriage between them void.³²

The same result occurs when there is no purported marriage at all, but the parties have either an express or implied agreement to accrue property together, which becomes community property by analogy.³³

The Nevada Supreme Court has explained that it is not critical in such cases whether the parties lived together full time, or apparently for any particular time at all.³⁴ This mirrors holdings elsewhere, which have concluded that a part-time relationship between parties that planned to marry at a future date can be the basis for a palimony award.³⁵

These holdings and precedents can be applied in a large number of factual contexts having a big impact on property distributions, going to subjects as diverse as appreciation of real estate, contributions to and increases in value of retirement benefits, and *Pereira/Van Camp* analyses³⁶ of a domestic partner’s interest in a separately owned business.

All of this law is “judge-made,” insofar as none of it is found in any specific provision of the NRS. Courts throughout the country have reviewed cases in which assets were accrued before, during, or after cohabitation relationships that did or did not include marriage, whether that marriage was before or after the cohabitation.³⁷ As the Nevada Family Law Practice Manual notes, in appropriate circumstances, all assets acquired during a couple’s relationship should be equally divided, because courts of equity would determine that “any possible alternative to that rule would be worse.”³⁸

In sum, the law of cohabitant relationships, as it is has evolved in Nevada, is essentially a contract analysis, directing a court to look for evidence of an express contract, implied contract, or to enter into a partnership or joint venture, the core concept of which is that “courts will protect [parties’] reasonable expectations with respect to transactions concerning property rights.”³⁹

As to Support Obligations

As an aside, it is worth noting that there are two nearly-unrelated concepts of “palimony” in the United States. In the west, the term is used as shorthand for *Michoff*-like divisions of property accrued during a relationship by analogy to community property.

On the east coast, however, the term has a completely different meaning. In New Jersey, in *Kozlowski*,⁴⁰ the court recognized that unmarried adult partners, even those who may be married to others, have the right to choose to cohabit

together in a marital-like relationship, and that if one of those partners is induced to do so by a promise of support given her by the other, that promise will be enforced.

The court held that the palimony contract may be oral and usually is because “[p]arties entering this type of relationship usually do not record their understanding in specific legalese” The contract may be express or implied. Consequently, the existence of the contract and its terms are ordinarily determinable not merely by what was said but “primarily by the parties’ acts and conduct in light of . . . [their] subject matter and the surrounding circumstances.”

A plaintiff seeking to make out a prima facie case for such is required to present competent evidence conclusively showing: (1) that the parties cohabited; (2) in a marriage-type relationship; (3) that, during this period of cohabitation, defendant promised plaintiff that he/she would support him/her for life; and (4) that this promise was made in exchange for valid consideration. On that last point, the law nationally has been quite consistent – there is no measurable “consideration” required for enforcement of a promise to support, and the fact that the parties had a sexual relationship is no kind of bar to enforcement of such promises.

The New Jersey Supreme Court found money damages to be adequate in remedying a non-matrimonial partner’s breach of his contract to provide lifetime support to an aggrieved partner, measured by the reasonable actuarially-determined lifetime support needs of the cohabitant.⁴¹

The parallel of the New Jersey reasoning to the Nevada analysis for parties intending to co-own property is obvious. To date, no Nevada case squarely addresses such a claim, but there is no immediately-apparent reason why such a case could not be brought.

The Statute of Frauds, NRS 111.220, has been on the books since Nevada was a territory, and forbids the enforcement of any alleged “oral contract” not to be performed within one year, **or** to answer for the debt or default or another, **or** to loan money or grant or extend credit to another.

However, it would apparently not bar enforcement of a promise of “support for life,” because such a promise is one that **could** be completed within a year, depending on facts that neither party knows when the promise is made. The Nevada Supreme Court has held that the Statute of Frauds only bars contracts that **necessarily** cannot be completed within a year: “[A]ny agreement which, by fair interpretation and in view of all circumstances existing at the time, **does not admit of performance within a year from the time of its making** is void under the statute.”⁴²

Holdings such as that one were the underlying law in New Jersey upon which its more specific palimony holdings were later based,⁴³ specifically holding that the Statute of Frauds is no barrier to enforcement of a promise for lifetime support.⁴⁴

In other words, the *Williams* dicta notwithstanding, “support palimony” does not appear any more incompatible with Nevada law than does the “property palimony” already recognized. Testing this hypothesis, however, will apparently require a trip to the Nevada Supreme Court.

Impact of the Nevada Domestic Partnership Law

If anything, the expansion of palimony from property to also include support rights was made much more likely by the 2009 adoption in Nevada of a Domestic Partnership statute.⁴⁵

The full impact of that law is beyond the scope of this article, but at minimum the Legislature seems to have provided at least one explicit form of “statutory authority” looked for in *Williams* for ordering spousal support between persons not lawfully married, since domestic partners are definitionally unmarried, and spousal support is explicitly available upon dissolution of the relationship.⁴⁶

Given this evolution of the statutory authority, it is hard to see a solid basis for arguing that it is within the ambit of district courts to find an agreement to share property as if it was community property, but beyond the power of those courts to find that there was a promise for support which is likewise enforceable.

CONFLICTING AND CONTRADICTIONARY PRESUMPTIONS IN MARITAL AND COHABITANT CASES

There is much to address and resolve in the case law. The existing authorities treat married and unmarried persons very differently, insofar as legal presumptions concerning their words and actions are concerned.

For example, a “spouse to spouse conveyance of title to real property creates a presumption of gift that can only be overcome by clear and convincing evidence.”⁴⁷ However, a conveyance of title to an unmarried cohabitant may be entirely disregarded, and the property distributed between the parties in accordance with their actual contributions to its acquisition.⁴⁸

There are many similar examples in Nevada law, going to presumptions, tracing, attributions, and burdens of proof. As the law of marital dissolution and cohabitant break-ups continues to converge, all such dichotomies will have to be explicitly confronted, re-analyzed, and explicitly addressed. Matters are even more severe in the federal sphere, where not only Social Security, but myriad tax and other laws vary enormously depending on marital status.⁴⁹

THE FUTURE OF MARITAL AND COHABITANT LAW IN NEVADA

As to Property

Not every instance of parties living in the same place is going to create a claim for division of assets accrued during that period, or for support payments thereafter. The parties may have an agreement for extremely separate economic lives, or have some different arrangement. In the cohabitation cases handled by this office, we have tended to watch for facts giving rise to a “common economic unit” – an inter-relation beyond mere presence in the same physical space where the successes and failures of one party have a direct impact on the fortunes of the other.

Such a common economic unit might be very easy to spot, or could be very subtle. If parties merge their finances, jointly acquire property and debts, etc., such an arrangement seems facially apparent. Where such is the case, deposits by one party into an IRA deprive the economic unit they have formed of resources it could have used, in exchange for future tax breaks and rewards – which look a lot like joint investments.

Where one party contributes only services, and the other contributes all cash, the same joint venture composed of unlike contributions can be found. Holdings elsewhere indicate that homemaking services may constitute adequate consideration for a contract to share accrued property.⁵⁰ The evidence in such a case, however, might be much scantier, and the chances that the parties would retrospectively disagree as to their expressed intentions would seem increased.

It is possible that the “contract” analysis explained in *Michoff* and *Gilman* could further soften to a simple examination of the parties’ intent. Similar evolutions are occurring elsewhere. In a recent Alaska case, the court brushed aside all technical assertions as to contract elements made by the party with title to the property at issue, finding that the words and behavior of the parties manifested a clear intent to co-own it:

In summary, we hold that courts, when dealing with the property disputes of a man and a woman who have been living together in a nonmarital domestic relationship, should distribute the property based upon the express or implied intent of those parties.

...

[W]e affirm under *Wood and Beal*, which ask what the parties intended, not whether they formed a contract.⁵¹

As to Support Obligations

As discussed above, the Nevada Supreme Court found that the property accrued during a period of premarital cohabitation could be considered for distribution after those parties later married and then divorced.⁵²

Courts elsewhere have applied identical reasoning to spousal support claims. One found that the wife's "very significant and substantial" contributions to the husband's "status and earning capacity," both ***before*** and during marriage, were properly considered in determining a proper award of alimony. The facts showed that the parties cohabited for seven years, while the future-husband completed college and much of medical school. They married in 1993, and the marriage fell apart in 1997, just as the husband completed residency and was beginning his medical career.⁵³

These holdings are signs and portents that a court could find pre-marital (or post-divorce) cohabitation just as valid a basis for a claim, or an enlarged claim, to spousal support as it would be for a property claim.

In the larger picture, if non-marital "contributions" to another's career can be considered, valued, and compensated if the parties happen to marry and divorce after those contributions are made, it is hard to discern a rationale for why identical contributions should be considered entirely without value if no such marriage occurs. This makes future judicial approval of entirely non-marital "support palimony" seem even more likely.

As to Procedure

Currently pending decision on rehearing in the Nevada Supreme Court is the *Landreth*⁵⁴ matter. This has greatly expanded beyond its original issues to become a general exploration of the subject matter jurisdiction of the Nevada family courts; it raises the question of what court is best suited to handle all the multiple scenarios in which property division issues between unmarried cohabitants might be raised.

As the Court noted in *Gilman*, such actions are based not on ***status***, but on enforcement of an ***agreement***, either express or implied. Where the question is whether conduct has demonstrated an implied contract for "partnership or joint venture," the action does not fit squarely into any of the statutory provisions recited in NRS 3.223.

Still, dissolution of a cohabitant relationship is far more similar to the breakdown of a marriage than it is to a contract dispute between strangers. As an Illinois court once put it, a property-accrual agreement between cohabitants is "not the kind of arm's length bargain envisioned by traditional contract principles, but an intimate arrangement of a fundamentally different kind."⁵⁵

And the most appropriate court to hear such cases is the court most familiar with distributing assets between parties terminating such relationships – the family court, which was specifically created and staffed with personnel trained in dealing with subject matters including "actions between unmarried, childless parties who used to live together and who dispute the division of property allegedly acquired during their relationship."⁵⁶

Family courts are quite accustomed to resolving disputes related to such implied or express agreements. Every case involving a premarital, post-nuptial or separation agreement involves parties similarly addressing contractual property matters within the context of such an “intimate arrangement.”

Judicially-created causes of action belong in the court assigned the tasks to which the analogy applies. Both community property and spousal support are dealt with in NRS Chapter 125, and the family courts have exclusive jurisdiction to hear cases under that chapter. Cases involving disposition of property accrued “by analogy” to community property, or claims for lifetime support by analogy to alimony, likewise belong in family court.

As the Family Law Section’s *Amicus Brief* on rehearing in *Landreth* stated:

Whether a child has been born, or one or both parties are falsely asserting that they are married, are poor reasons to send some cases one way, and others another. Case assignments should be deliberate, and based on which court is best equipped to handle the subject matter of the dispute, not on the happenstance of unrelated facts, the lies of the parties, or the contents of their competing allegations.

At this writing it is unknown what decision the Nevada Supreme Court will make in *Landreth*. But if, for whatever reason, it sends cases dealing with unmarried cohabitants to the civil/criminal division to be addressed by judges more used to corporate spats and fender-benders, the Nevada Legislature should waste no time amending the relevant statutes to ensure that cases involving the break-up of cohabitant relationships are addressed by judges who “develop the expertise and have the time to study the case law and to understand the current state of the art in family issues” as was intended when the family courts were created.

CONCLUSIONS AND CONVERGENCE

Societal evolution is leading to rapid changes in traditional concepts of property ownership and support duties; relevant law, both substantive and procedural, must change to keep up, or it will be the source of much injustice.

Stepping back from the individual cases and disputes, it seems clear that the entire concept of “family law” is in transition – to *what* remains to be seen, but it does seem clear that the law of marital dissolution per se is destined to be an ever-smaller piece of the whole. The lines of authority relating to marital dissolution and unmarried cohabitant break-ups appears to be converging.

There can be little question that the demographics of marriage and family have undergone enormous change in the past century.⁵⁷ Some commentators have called for the outright abolition of the institution of marriage as now known, on the basis of traditional gender inequality and other grounds.⁵⁸ One commentator⁵⁹ predicts possible scenarios resulting from the conflicting pressures to “preserve traditional marriage” on the one hand, and to expand marriages to include same-sex unions on the other, ranging from extinction of marriage to its enormous expansion.

However the clash of ideals, demands, initiatives, and reforms evolve, it seems clear that the concepts of both “marriage” and “family” are undergoing significant examination and redefinition, and that change – perhaps drastic, reformative change – can be expected in the immediate future. The immediate front addressed here is the convergence and conflicts in the treatment of married and non-married couples by Nevada law, and the need to derive a legal scheme that

can and does treat the parties to all sorts of real-life relationships equitably.

The concepts addressed in family law are fluid of necessity, making it necessary to be aware of both evolutionary and revolutionary change. A family law attorney must be cognizant that the concept of “family,” and the rights and responsibilities of the participants in such social units, can be altered significantly, by choice and by outside events. “Justice” is a moving target, and it must be relentlessly pursued.

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ENDNOTES

1. United States Census Bureau, *Majority of Children Live With Two Biological Parents* (Feb. 20, 2008) (based on 2004 data, available at <http://www.census.gov/newsroom/releases/archives/children/cb08-30.html>, last visited Feb. 20, 2011). The report indicates that 19.1 million children lived in single-parent homes (mostly with their mothers), and another 4.1 million lived with their biological mothers and step-fathers.
2. *Compare Robertson v. Western Baptist Hospital*, 267 S.W.2d 395 (Ky. Ct. App. 1954) (1954 conceptualization of family) with *Allen v. State Farm Mutual Automobile Ins. Co.*, 708 N.W.2d 131 (Mich. Ct. App. 2005) (2005 debate among court members for what constitutes a legitimate “family”); see also “Definition of Family – Theoretical Definitions,” posted at <http://family.jrank.org/pages/488/Family-Definition-Theoretical-Definitions.html>, recounting eight conceptual approaches to determining what groupings are or are not families, as discussed by multiple studies and papers.
3. “Definition of Family,” *supra*.
4. This is not a new concept: “Law must be stable, and yet it cannot stand still.” Roscoe Pound (1870–1964).
5. A marriage that takes legal effect, without license or ceremony, when a couple live together as husband and wife, intend to be married, and hold themselves out to others as a married couple. A validly-entered common-law marriage is recognized in all States, but the only places still permitting them to be entered into are apparently Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah.
6. *E.g.*, California. See, *e.g.*, *In re Marriage of Bergman*, 168 Cal. App. 3d 742, 214 Cal. Rptr. 661 (Cal. Ct. App. 1985).
7. *E.g.*, Arizona. See Ariz. Rev. Stat. § 25–211 (1998).
8. *E.g.*, Nevada. See *Forrest v. Forrest*, 99 Nev. 602, 668 P.2d 275 (1983).
9. Alaska, Delaware, Hawaii, Kansas, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, North Dakota, Oregon, South Dakota, Utah, Vermont, Washington, and Wyoming.
10. See *Dahlquist v. Nev. Indus. Comm’n*, 46 Nev. 107, 206 P. 197 (1922); *In re Keig’s Estate*, 59 Cal. App. 2d 812 (Ct. App. 1943) (discussing evolution of Nevada common law marriage cases).
11. See Laws of the Territory of Nevada, Ch. 33, § 1 (1861).
12. See, *e.g.*, *State v. Zichfeld*, 23 Nev. 304, 313-14, 46 P. 802, 805 (1896) (“Our statute does not expressly, nor by necessary implication, as we view it, render a marriage had in disregard of its prescribed formalities void. We are to presume that the legislature knew that marriages by contract are valid at common law; that they have thus been entered into from time immemorial, and are liable to continue to be so contracted . . .”)
13. NRS 122.010(1).

14. *Wolford v. Wolford*, 65 Nev. 710, 200 P.2d 988 (1948).
15. *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).
16. This is a bare pencil sketch of Nevada alimony law. Those interested in the subject are referred to Judge David Hardy's thorough and scholarly review. See David A. Hardy, *Nevada Alimony: An Important Policy in Need of Coherent Policy Purpose*, 9 Nevada L.J. 325 (Winter 2009).
17. "Support" is a word of "broad signification," permitting the separate property of the husband to be set aside for the wife and children for "everything, necessities and luxuries, which the wife in like circumstances is entitled to have and enjoy." *Lake v. Bender*, 18 Nev. 361, 403 (1884) *opn. on reh'g*.
18. NRS 125.040 authorizes Nevada courts to make orders for "temporary maintenance for the other party" during the pendency of an action. No standards are provided, and such temporary orders for the purpose of keeping everyone fed, clothed, and housed during the pendency of the case are often made on a perfunctory review of "need and ability," as disclosed solely by preliminary financial affidavits.
19. NRS 125.150(1) authorizes the court to award alimony at the conclusion of a divorce case "as appears just and equitable." No standards are provided there, either.
20. *Id.*
21. In 1989, the Nevada Legislature added NRS 125.150(8), requiring a court granting a divorce to "consider the need to grant alimony to a spouse for the purpose of obtaining training or education relating to a job, career or profession." This provision did add some language indicating what such an award would encompass, and at least two factors to consider in making such an award (whether the obligor obtained job skills or education during the marriage, and whether the recipient provided financial support while the obligor did so). Such an order must contain terms for when such training or education will commence.
22. NRS 125.150(1) considers on its face that alimony might be payable "in a specific principal sum" rather than in installments, and NRS 125.150(4) provides: "In granting a divorce, the court may also set apart such portion of the husband's separate property for the wife's support, the wife's separate property for the husband's support or the separate property of either spouse for the support of their children as is deemed just and equitable." In the meantime, the community property statutes require a presumptive equal division of such property, absent a "compelling reason" for an unequal division and the trial court "set [ting] forth in writing the reasons for making the unequal disposition." NRS 125.150(1). So while "lump sum alimony" could, at least theoretically, be made from community property, the required standard and legal findings are so much lighter under the alimony rubric ("abuse of discretion") than under the property division language ("compelling circumstances") that most lump sum awards seem to be of separate property.
23. See *Shydler v. Shydler*, 114 Nev. 192, 954 P.2d 37 (1998).
24. Marshal Willick, *In Search of a Coherent Theoretical Model for Alimony*, Nevada Lawyer, April, 2007, at 40.
25. "Regarding the award of spousal support, the legislature has failed to set forth an objective standard for determining the appropriate amount. Absent such a standard, there appears to be a disparity in the awards for spousal support on similar facts even greater than for child support." *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998).
26. NRS 125.150(8).
27. The insertion of these fault considerations into some alimony determinations, where they are otherwise forbidden from consideration (see *Rodriguez v. Rodriguez*, 116 Nev. 993, 13 P.3d 415 (2000)) is emblematic of a larger logical error in the comprehensive structure of the Nevada law of property and alimony, but that topic will have to wait for another day.
28. Again, this forum does not permit a comprehensive discussion of each related topic. For background, see Marshal Willick, "What Do You Do When They Don't Say 'I Do'? Cohabitant Relationships and Community Property" (Council of Community Property States & State Bar of Nevada, 1998), posted at http://www.willicklawgroup.com/palimony_cohabitation.
29. *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984).

30. *Carr-Bricken v. First Interstate Bank*, 105 Nev. 570, 779 P.2d 967 (1989).
31. *Hay v. Hay*, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984).
32. *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).
33. *Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992).
34. *Gilman v. Gilman*, 114 Nev. 416, 427, 956 P.2d 761, 767 (1998) (explaining *Michoff* and noting that the basis of that decision was implied contract, pooling of assets, holding out as husband and wife, treating assets as community property, and building a business together, and finally concluding: “neither cohabitation nor a romantic relationship is the real basis for the *Michoff* holding”). The only thing that does not belong on the list of “contract-like” considerations is “holding out,” an unfortunate and apparently ill-thought-out relic of the common-law marriage elements from 100 years ago that really has no place in the concept of express or implied contract to treat property as if it were community.
35. See *Sullivan v. Rooney*, 533 N.E.2d 1372 (Mass. 1989) (where parties had a relationship of approximately 14 years, during 7 of which they lived together, were engaged to be married at some “indefinite future date,” female cohabitant, who gave up her career and maintained a home for herself and the male cohabitant, was entitled to an imposition of a constructive trust on the property, allotting her a one-half interest in the residence).
36. See *Johnson v. Johnson*, 89 Nev. 244, 510 P.2d 625 (1973) (discussing and applying the theories under which a separately-titled asset which increases in value during a marriage as the result of one spouse’s labor and skills creates a property interest in the other spouse, citing *Pereira v. Pereira*, 103 P. 488 (Cal. 1909), and *Van Camp v. Van Camp*, 199 P. 885 (Cal. 1921)).
37. In deciding *In re Rolf*, 16 P.3d 345 (Mont. 2000), the court discussed parties who had cohabited for almost three years, and then married, only to divorce less than two more years later. On appeal, the trial court’s holdings were affirmed, including that it was proper to consider the premarital cohabitation of the parties in ruling on the fairness of the eventual property distribution, and that “it would be wholly inequitable for the Court to disregard the relationship of the parties as it existed from [the date they began cohabitation].” 16 P.3d at ¶¶ 33-37.

Utah law holds similarly. In *Layton v. Layton*, 777 P.2d 504, 505-506 (Utah App. 1989), the court stated “an equitable division of property accumulated by unmarried cohabitants has been sustained upon finding a partnership, contract for services, and/or a trust.” (footnotes omitted).
38. Nevada Family Law Practice Manual, 2008 Edition § 1.269.
39. *Western States Constr. v. Michoff*, 108 Nev. 931, 937, 840 P.2d 1220, 1224 (1992).
40. *Kozlowski v. Kozlowski*, 80 N.J. 378, 403 A.2d 902 (1979).
41. *Id.*, 80 N.J. at 388-389, 403 A.2d 902.
42. *Stanley v. A. Levy & J. Zentner Co.*, 60 Nev. 432, 112 P.2d 1047 (Nev. 1941) (emphasis added).
43. *Kozlowski v. Kozlowski*, 80 N.J. 378, 403 A.2d 902 (1979) (“[An] agreement between adult non-marital partners, whereby Plaintiff agreed to live with Defendant and run the household, in exchange for Defendant’s promise to provide for Plaintiff for the rest of her life, was enforceable, because the agreement was not explicitly and inseparably founded on sexual services. The relationship between the parties was not tainted by the fact that Defendant was married at that time. [An] agreement between adult parties living together is enforceable to the extent it is not based on a relationship proscribed by law, or on a promise to marry”).
44. See, e.g., *Crowe v. De Gioia*, 495 A.2d 889 (N.J. App. Div. 1985); *Connel v. Diehl*, 938 A.2d 143 (N.J. App. Div. 2008) (an unmarried person has a well settled right to enforce her cohabitant’s promise to support her for life).
45. NRS ch. 122A.
46. NRS 122A.200(1)(j)(3).
47. *Kerley v. Kerley*, 112 Nev. 36, 910 P.2d 279 (1996).

48. *Sack v. Tomlin*, 110 Nev. 204, 871 P.2d 298 (1994); *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995).
49. See, e.g. *Estate of Shapiro v. United States*, ___ F.3d ___, No. 08-17491, slip op. at 2735, fn. 4 (9th Cir., Feb. 22, 2011) (“rightly or wrongly, as a policy choice of Congress the estate tax bestows special status on married couples that it does not bestow on unmarried couples”) (J. Tashima, dissenting in part).
50. See, e.g., *Carroll v. Lee*, 712 P.2s 923 (Ariz. 1986); *Chiba v. Greenwald.*, 67 Cal. Rptr. 3d 86 (Ct. App. 2007); *Whoreton v. Dillingham*, 248 Cal. Rptr. 405 (Ct. App. 1988).
51. *Tolan v. Kimball*, 33 P.3d 1152 (Alaska 2001).
52. *Carr-Bricken v. First Interstate Bank*, 105 Nev. 570, 779 P.2d 967 (1989).
53. *Meyer v. Meyer*, 606 N.W.2d 184 (Wis. 2000).
54. *Landreth v. Malik*, 125 Nev. ___, 221 P.3d 1265 (Adv. Opn. No. 61, Dec. 24, 2009).
55. *Hewitt v. Hewitt*, 394 N.E.2d 1204 (Ill. 1979).
56. *Hay* was precisely such a case; the published opinion recites only that one of the parties made a **claim** of “holding out” after the fact of their divorce. Both *Hay* and *Michoff* addressed the proof required to establish property rights of cohabitants under theories of contract or other equitable remedies. The majority opinion in *Landreth*, however, seemed to confuse elements of proof tending to show an implied contract to co-own property as components of subject matter jurisdiction.
57. See Ira Mark Ellman et al., 3 Family Law: Cases, Text, Problems (1998) (recounting summary of comprehensive demographic changes).
58. See Nancy Polikoff, *Ending Marriage as We Know It*, 32 Hofstra L. Rev. 201 (2003-04); Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and other Twentieth Century Tragedies* 161-66 (1995); Judith Stacey, *Good Riddance to “The Family”*: A Response to David Popenoe, 55 J. Marriage & Fam. 545 (1993) (asserting that stable marriage depends on inequality).
59. Elizabeth S. Scott, *A World Without Marriage*, 41 Fam. L. Q. No. 3 (ABA Fam. Law Section, Fall, 2007) 537.