

# PRACTICE IMPLICATIONS: FAMILY LAW

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## I. WHAT IS THE SIGNIFICANCE OF THE RELATIONSHIP IN OREGON?

### A. Oregon Marriage

“When the county clerk has received the written application for the marriage license from both applicants, and all other legal requirements for issuance of the marriage license have been met, the county clerk shall issue a marriage license. . . .” ORS 106.077(1).

“A person solemnizing a marriage shall within one month thereafter make and deliver to the county clerk who issued the license for the marriage a certificate. . . .” ORS 106.170(1).

“The county clerk shall file the certificate mentioned in ORS 106.170 and record it in the record of marriages.” ORS 106.180(1).

“A record of each marriage performed in this state shall be filed with the Center for Health Statistics and shall be registered if it has been completed and filed in accordance with this section and rules adopted by the State Registrar of the Center for Health Statistics.” ORS 432.405(1).

### B. Foreign Marriage (e.g., Canada or Massachusetts)

“The general rule is that a marriage which is recognized as valid in the state where it was performed will be recognized in Oregon. There may be exceptions to the general rule where the policy of this state dictates a different result than would be reached by the state where the marriage was performed. We know of no policy of this state which dictates an abandonment of the general rule in the present case. Such policy as there is, would tend towards holding any marriage valid which was entered into in good faith. Therefore, in order to determine the validity of the marriage in question, we must look at the law of Idaho where the marriage was performed. There is no contention that the Idaho marriage was not regularly performed pursuant to the ceremonial law of Idaho.”

*Garrett v. Chapman*, 252 Or 361, 364, 449 P2d 856 (1969) (citations omitted).

### C. Civil Union (e.g., Vermont)

“Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage.” 15 VSA §1204(a).

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” US Const Art IV, §1.

“No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”

28 USC §1738C.

“Here, the parties are in need of a judicial remedy to dissolve their legal relationship created by the laws of Vermont. Because Vermont does not define a civil union as a marriage, the provisions of General Laws Chapter 208, which provide for divorce in Massachusetts, are not applicable to this action. However, in accord with the decision in [*Goodridge v. Dep’t of Public Health*, 798 NE2d 941 (Mass 2003)], and the public policy of Massachusetts, the plaintiff and the defendant in this matter should be afforded all of the responsibilities and rights that flow from a civil union, including a legal remedy for the dissolution of their legal relationship. Pursuant to the judgment in this action, the court exercises its general equity jurisdiction to dissolve the civil union of plaintiff and defendant.”

*Salucco v. Alldredge*, 2004 WL 864459\*4 (Mass Super 2004); *but cf. Rosengarten v. Downes*, 802 A2d 170 (Conn App), *cert dismissed* 806 A2d 1066 (Conn 2002) (the dissolution of a Vermont civil union was not a “family relations matter” within the power of the trial court to entertain).

“When a court is sitting in proceedings for annulment or dissolution of a marriage, or for separation, it shall have full equity powers.” ORS 107.405.

## II. LIABILITY FOR FAMILY SUPPORT

“The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.” ORS 108.040(1), *see also* ORS 109.053 (same for stepchildren).

“Any married person or state agency which is providing public assistance . . . to that married person, or on behalf of minor children, may apply to the circuit court of the county in which the married person resides or in which the spouse may be found for an order upon the spouse to provide for support of the married person or for the support of minor children and children attending school, or both. . . .” ORS 108.110(1).

## III. ESTABLISHING PATERNITY

“The paternity of a person may be established as follows:

“(a) The child of a wife cohabiting with her [spouse] who was not impotent or sterile at the time of the conception of the child shall be conclusively presumed to be the child of her [spouse], *whether or not the marriage . . . may be void.*

“(b) A child born in wedlock, there being no decree of separation from bed or board, shall be presumed to be the child of the mother’s [spouse], whether or not the marriage . . . may be void. This shall be a disputable presumption. . . .”

ORS 109.070(1).

“The relationship, rights and obligation between a child born as a result of artificial insemination and the mother’s [spouse] shall be the same to all legal intents and purposes as if the child had been naturally and legitimately conceived by the mother and the mother’s [spouse] if the [spouse] consented to the performance of artificial insemination.”

ORS 109.243.

“Just as a husband is deemed to be the lawful father of a child unrelated to him when his wife gives birth after artificial insemination, so should a husband *and* wife be deemed the lawful parents of a child after a surrogate bears a biologically unrelated child on their behalf. In each instance, a child is procreated because a medical procedure was initiated

and consented to by intended parents. The only difference is that in this case—unlike artificial insemination—there is no reason to distinguish between husband and wife.”

*In re Marriage of Buzzanca*, 72 Cal Rptr 2d 280, 282 (Ct Apps 1998).

#### IV. DISSOLUTION

“Whether or not the legislature determines that it is ‘just and equitable’ to make support available to a party who just ‘lives with’ a partner, it has determined that equity may require support for a party who has sought the benefit of marriage even though the marriage is later declared void. . . . That does not appear to be a ‘reward’ but, rather, a legislative recognition of the intertwining personal and financial relationships that may result even though a marriage is actually ‘void.’”

*Denis and Denis*, 153 Or App 655, 660 & n 5, 958 P2d 199 (1998).

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