

COMMON LAW MARRIAGE

A common law marriage is not based upon statute but comes from the Common Law of England which is the basis of all our laws. Such marriages have been recognized in many states. Common law marriages were recognized both in Indian Territory applying Arkansas decisions and in Oklahoma Territory applying Nebraska decisions, those being the laws in effect in the territories at that time.

DEFINITION:

Absent a marital impediment suffered by one of the persons to the common law marriage, a common law marriage occurs upon the happening of three events: a declaration of the parties of an intent to marry, cohabitation, and a holding out of themselves to the community as being husband and wife. Brooks vs. Sanders, 190 P.3rd 357, 2008 OK APP 66.

RELEVANCE:

The concept of a marriage existing without a license from the state and a civil or religious ceremony is relevant, aside from issues of morality, in matters of property distribution either upon death or divorce of the parties. It also has some effect upon child custody issues.

EXAMPLES ARE:

REMARRIAGE AFTER DIVORCE. In one case in which I was involved the parties secured a divorce and the home was set aside to the husband. The parties soon went back

together but the divorce was not set aside nor did they remarry. They lived together in this manner for several years, then the husband died. In the meantime the wife had made the payments on the home from her earnings. The husband's children by a prior marriage claimed sole ownership of the home by reason of the parties not being married and thus the wife having no probate homestead interests (Right of continued occupancy). I represented the wife who established a common law marriage after the divorce thus giving her an undivided one-half (1/2) interest in the home and a probate homestead. Without common law marriage she would have totally lost her home.

FRAUD BY ONE OF THE PARTIES: In another of my cases the parties lived together for several years in a home the husband had provided but was owned jointly. The wife fraudulently induced the husband to convey the home to her. The wife mortgaged the home, representing that she was single, and spent the loan proceeds on herself. Then she forced the husband to leave and defaulted on the mortgage payments. He sued for divorce alleging a common law marriage. The Court found that such marriage had existed and gave the house back to the husband. Since a common law marriage did exist the husband's signature was essential to the validity of the mortgage. The mortgage company sought foreclosure against the husband. Since he had not signed the mortgage and knew nothing of it, the mortgage was void. Without recognition of common law marriage the husband would have lost the house.

COHABITATION WHERE PRIOR SPOUSE HAS DISAPPEARED: In Hill vs. Shreve, 448 P.2d 848 (1968) the plaintiff and deceased lived together as man and wife for 40 years, after the deceased's former husband had left her. The former husband had not been heard

from for years. The Court found a common law marriage existed and appointed the surviving husband as the Administrator of the deceased wife's estate.

FAILURE TO COMPLETE LEGAL MARRIAGE REQUIREMENTS: In Fisher vs. Fisher, 243 P.730 (1925), a 40 year old dentist married a 20 year old girl. They went through a marriage ceremony but he had never gotten a license. She later sued for divorce and alimony. He denied they were ever married. The Court found a common law marriage existed and granted the divorce and alimony. Without common law marriage she would have had no case for spousal support.

LEGITIMACY OF CHILDREN: Although legitimacy of children is no longer considered in the same light as it once was there are still legal distinctions, one of which being the right of an unmarried father to child custody or visitation, in the absence of a court order. As a matter of interest is a statement of the 1914 Oklahoma Supreme Court made In Re: Love's Estate, 1942 P.305.

"The deceased took this woman in the presence of witnesses to be his wife, moved her to another town, where they lived together as man and wife, and were known as such, until the man came to his death. At the trial of this suit a little daughter, the result of this union, sat innocently by, unconscious that her very name and future status were being determined there. We infer from the record that the property involved is insignificant, and was probably little in mind, while this woman fought for the relation of wife and for a name for her little girl. She is entitled to both. We do not propose to sit here, considering the most sacred relation of life, and construe away the status of this woman, who appears to have acted in good faith; neither will we turn the innocent result of this common-law union out into the world a nameless thing. She was begotten by a man who had voluntarily assumed the relation of husband, and she shall have the right to be called his child and bear his name."