NONMARITAL RELATIONSHIPS AND THEIR IMPACT ON THE INSTITUTION OF MARRIAGE AND THE TRADITIONAL FAMILY STRUCTURE

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Domestic relations, as family law was almost universally once known, has had a reputation for stability. In the past, a lawyer who stayed away from family law problems for awhile could rest assured that there would be no significant changes when he returned. This is no longer true. The precedent-setting developments in family law began to take recognizable shape in the early and mid 1970's. Empirical evidence shows that the most significant new developments have taken place in the past five or six years.[1] In a monograph published in the Family Law Reporter on August 7, 1979, the author explains:

> It is not that difficult to see why such change has come about, for mainly family law and practice has followed changing public attitudes. It is a field of law which, unlike so many, gives judges and practitioners a chance to demonstrate their modern social attitudes, or at least their awareness of social trends. In fact, the dynamics of legal change involve, perhaps, some traces of human vanity.[2]

Some authorities have suggested that the entry of the

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[1] *The Course of Change in Family Law* 1978-79, [1979] 5 Fam. L. Rep. (BNA) 4013 [hereinafter cited as *Change*].

[2] *Id.*

no-fault dissolution concept after 1970 served as the underlying catalyst to trigger most of the recent changes on the domestic relations scene.[3] There is little doubt that the somewhat speedy acceptance of the no-fault concept caused all states except Illinois and South Dakota to legislate some form of no-fault dissolution into their laws. However, this is only one facet to be considered in explaining why revolutionary changes have occurred in family law.

Most of the notable developments in family law relate to the following areas: contract cohabitation, "palimony," alimony for men, do-it-yourself divorce kits, self-help artificial insemination, test tube babies, embryo transplants, abortion and contraceptives for minor females without parental consent, rights of putative fathers, rights of illegitimate children, joint custody, parental and spousal immunity and the tender years doctrine.[4] Although each of these topics is worthy of in-depth analysis, this Article focuses on the impact of contract cohabitation (more often referred to as nonmarital relationships) on the traditional view of marriage and the family structure.

The importance of the marital institution in our society's structure has long been recognized. Even Justice Tobriner, writing for the majority in *Marvin v. Marvin*,[5] after his comments on the pervasiveness of nonmarital relationships, stated:

> The mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral considerations that have apparently been so widely abandoned by so many. *Lest we be misunderstood, however, we take this occasion to point out that the structure of society itself largely depends upon the institution of marriage, and nothing we have said in this opinion should be taken to derogate from that institution. The joining of the man and woman in marriage is at once the most socially productive*

[3] Freed & Foster, *Taking Out The Fault But Not The Sting*, TRIAL, April 1976, at 10.

[4] *See, e.g., Change, supra* note 1, at 4014-15, 4017-18, 4024.

[5] 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976).

> *and individually fulfilling relationship that one can enjoy in the course of a lifetime.*[6]

In the same vein, Justice Douglas, in *Griswold v. Connecticut*,[7] set forth the following definition lauding the sanctity of marriage:

> Marriage is a coming together for better or for worse, hopefully enduring and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.[8]

The attention paid to the institution of marriage in these cases, especially in *Marvin*,[9] might lead one to believe that there is no reason to be concerned about erosion of the traditional view of marriage and the family structure. However, in truth most premises or assumptions underlying old familiar principles and traditional standards of family law are being rapidly undermined.[10] Family law is undergoing a more rapid rate of change in substance and procedure than any other area of the law. Study results over the last several years indicate that fundamental changes are occurring in marriage and family living.[11] Whether these changes represent only a temporary departure from past norms or the emergence of new and lasting lifestyles, the fact of their existence has important implications for current social and economic programs.[12]

Following the lead of the *Marvin* case, several other states have recognized that the number of couples living together without marrying has increased substantially. Such

[6] *Id.* at 684, 557 P.2d at 122, 134 Cal. Rptr. at 831 (emphasis supplied).

[7] 381 U.S. 479 (1965).

[8] *Id.* at 486.

[9] *See* note 5 *supra*.

[10] Kay & Amyx, *Marvin v. Marvin: Preserving the Options*, 65 CALIF. L. REV. 937, 975 (1977) [hereinafter cited as Kay & Amyx].

[11] *Change, supra* note 1, at 4013.

[12] BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-20, No. 306, MARITAL STATUS AND LIVING ARRANGEMENTS, March 1976, at 1 (1977), cited in Kay & Amyx, *supra* note 10, at 975.

nonmarital relationships usually lead to legal controversy when one partner dies or the couple separates. As in *Marvin*, these courts believed that the prevalence of nonmarital relationships in modern society and the social acceptance of them marks today as a time when our courts should by no means apply the doctrine of unlawfulness in dealing with these so-called meretricious relationships. These courts, applying a *Marvin*-type rule, make it clear that judicial barriers that may stand in the way of policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed.

As a matter of fact, Oregon's decision in *Latham v. Latham*[13] and Minnesota's decision in *Carlson v. Olson*[14] go beyond *Marvin*. It was the decision of the *Latham* court, rather than that of the California court in *Marvin*, which contained the strongest rejection of the illegal consideration doctrine. In *Latham* the defendant defaulted on his promise to divide with his nonmarital partner all property accumulated during the relationship if they should separate. The agreement was enforced despite its being based on the consideration of "living with defendant, caring for and keeping after him, and furnishing and providing him all the amenities of married life."[15] The court held squarely that the agreement was not void as against public policy, and found support for that position in the statutory repeal of a former "lewd or lascivious cohabitation" statute.[16]

Some courts, on the other hand, have found cohabitation contracts void as against public policy. In *Levin v. Levin*[17] the New York court held that an oral express agreement by a married man to make the plaintiff woman an irrevocable beneficiary of an insurance policy on his life, in return for her society and companionship, was void as

[13] 274 Or. 421, 547 P.2d 144 (1976).
[14] _ Minn. _, 256 N.W.2d 249 (1977) (where parties held themselves out as married, they intended accumulations to be divided equally on separation).
[15] 274 Or. at _, 547 P.2d at 144-45.
[16] *Id.* at _, 547 P.2d at 147.
[17] 253 A.D. 758, 300 N.Y.S. 1042 (1937).

against public policy and that she could not recover nor have specific performance of the agreement. The more recent Georgia decision in *Rehak v. Mathis*[18] also barred recovery of support and the residence by an unmarried woman who cooked, cleaned and cared for the decedent for eighteen years, and who also had contributed money for the purchase price of their home and met several of the mortgage payments. She alleged that she did these things in return for his oral promise to provide her with support and a home.

The majority opinion in *Mathis* provoked a strong dissent by Justice Hall:

> Courts normally do not deny judicial relief to sinners. If that were the rule, the caseload in all courts would be drastically reduced. Courts normally do not deny judicial relief where both plaintiff and defendant have been immoral. If that were the rule, the divorce rate would be reduced.
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> What courts invariably do is refuse to enforce a contract where, as the majority says, the contract is "founded upon" an illegal or immoral consideration; i.e., where the consideration for the contract is the agreement by one or both parties to perform an illegal or immoral act. Thus, where a man and woman have contracted with each other to cohabit together illegally, a court will not require the woman to perform her promise nor will it require the man to pay for her services. However, where a man hires a maid to clean house for him, his obligation to pay wages is enforceable in court even though he seduces her. The difference is that in the former case the illegal conduct is part of the consideration for the contract whereas in the latter case the illegal conduct is not part of the consideration but is incidental to the contract. I do not find evidence that the female in this case agreed to make house payments in consideration of the male's promise to seduce her or to cohabit with her illegally.[19]

It seems clear that the above dissent is in accord with contemporary values and that the majority opinion in *Mathis* and *Hewitt v. Hewitt*,[20] discussed *infra*, are anachronistic. Most recent decisions are at least willing to sever

[18] 239 Ga. 541, 238 S.E.2d 81 (1977).
[19] *Id.* at _, 238 S.E.2d at 82-83.
[20] 77 Ill. 2d 49, 394 N.E.2d 1204 (1979).

the tainted part from the rest of the consideration to support recovery on the basis of a written or oral express agreement. Authorities such as Corbin, Williston, and the *Restatement of Contracts* support the severability doctrine.[21] The current question is whether the law has progressed beyond such authorities so as to permit recovery on the basis of implied-in-fact agreements or quasi-contracts.[22]

The Illinois Supreme Court in *Hewitt* flatly rejected the contention that the issue of unmarried cohabitants' mutual property rights can be appropriately characterized solely in terms of contract law or limited to considerations of equity or fairness as between the parties to such relationships.[23] Further, the *Hewitt* court held:

> There are major public policy questions involved in determining whether, under what circumstances, and to what extent it is desirable to accord some type of legal status to claims arising from such relationships. Of substantially greater importance than the rights of the immediate parties is the impact of such recognition upon our society and the institution of marriage. Will . . . the recognition of such rights weaken marriage as the foundation of our family-based society? . . . In summary, have the increasing numbers of unmarried cohabitants and changing mores of our society . . . reached the point at which the general welfare of the citizens of this State is best served by a return to something resembling the judicially created common law marriage our legislature outlawed in 1905?[24]

The court insisted that judicial recognition of mutual property rights between unmarried cohabitants would clearly violate the policy of the Uniform Marriage and Divorce Act. Although the Act does not specifically address the subject of nonmarital cohabitation, it does state that one of its underlying purposes is to "strengthen and preserve the integrity of marriage and safeguard family relationships."[25] *Hewitt* held that there was an unmistakable legislative judgment disfavoring the grant of mutual property rights to knowingly unmarried cohabitants. Accordingly, since the woman's claims contravened this public policy, they were unenforceable. The court said that the legislature, not the courts, should decide "whether change is needed in the law governing the rights of parties in this delicate area of marriage-like relationships."[26] The chance of the passage of such legislation in Illinois is highly unlikely. Such a prediction is bolstered by the recent holding of the Illinois Sureme Court in *Jarrett v. Jarrett*,[27] wherein the court upheld the transfer of custody of three children from mother to father by reason of the mother's open and continuing cohabitation with her boyfriend. The mother argued that her conduct did not affront public morality because such conduct is now widely accepted, citing 1978 Census Bureau statistics showing 1.1 million households composed of an unmarried man and woman, close to a quarter of which also included at least one child.[28] The court brushed aside this argument, observing that it was "essentially the same argument we rejected last term in *Hewitt v. Hewitt* . . . and it is equally unpersuasive here."[29] Chief Justice Goldenhersh, dissenting in *Hewitt*, said, "Courts are uniquely equipped to decide legal issues and are well advised to leave to the theologians the question of the morality of the living arrangement into which the plaintiff had entered."[30]

Some commentators have approved the decision in *In re Marriage of Carey*,[31] where the issues concerning prop-

[21] *See* 6A A. CORBIN, CONTRACTS § 1476 (1962 ed.); 15 WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1745 (3d ed., W. Jaeger, ed., 1972); RESTATEMENT OF CONTRACTS § 589 (1932).

[22] Foster & Freed, *Marvin v. Marvin: New Wine in Old Bottles* [1978-79] 5 Fam. L. Rep. (BNA) 4001 [hereinafter referred to as *New Wine*].

[23] 77 Ill. 2d at 57-58, 394 N.E.2d at 1207.

[24] *Id.* at 58, 394 N.E.2d at 1207-08 (citations omitted).

[25] UNIFORM MARRIAGE AND DIVORCE ACT § 102(b)(1).

[26] 77 Ill. 2d at 61, 394 N.E.2d at 1209.

[27] _ Ill. 2d _, 400 N.E.2d 421 (1979), *cert. denied*, 49 U.S.L.W. 3286 (1980).

[28] *Id.* at _, 400 N.E.2d at 424.

[29] *Id.*

[30] *Id.* at _, 400 N.E.2d at 427.

[31] 34 Cal. App. 3d 345, 109 Cal. Rptr. 862 (1973).

> The basic theory of the new law [Family Law Act] is that, in disposing of the property, a dissolution of marriage should be treated much like

erty were resolved through analogy with or application of partnership law.[32] The *Marvin* court borrowed precedent from other jurisdictions in outlining theories to assist the courts in settling disputes between nonmarital partners:

> The courts may inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract or implied agreement of partnership or joint venture (see *Estate of Thornton* (1972), 81 Wash. 2d 72, 499 P.2d 864), or some other tacit understanding between the parties. The courts may, when appropriate, employ principles of constructive trust (see *Omer v. Omer* (1974), 11 Wash. App. 386, 523 P.2d 957) or resulting trust (see *Hyman v. Hyman* (Tex. Civ. App. 1954), 275 S.W.2d 149). Finally, a nonmarital partner may recover in quantum meruit for the reasonable value of household services rendered less the reasonable value of support received if he can show that he rendered services with the expectation of monetary reward (see *Hill v. Estate of Westbrook, supra*, 39 Cal. 2d 458, 462, 247 P.2d 19).[33]

The court in *Marvin*, in a note to its decision, added:

> Our opinion does not preclude the evolution of additional equitable remedies to protect the expectations of the parties to a nonmarital relationship in cases in which existing remedies prove inadequate; the suitability of such remedies may be determined in later cases in light of the factual setting in which they arise.[34]

A Michigan Court of Appeals, several years before *Marvin*, enforced an oral contract to convey a house to the

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> the dissolution of a business partnership. Regardless of the economic circumstances of the business partners or of their moral conduct during the existence of the partnership, on dissolution the partners receive a portion of the assets commensurate with their respective partnership interest.

Id. at 351, 109 Cal. Rptr. at 865, *citing* Cont. Ed. Bar, ATTORNEY'S GUIDE TO FAMILY LAW ACT PRACTICE 250 (2d ed. 1972). *In re* Marriage of Carey was overruled by *Marvin* to the extent that it held a nonmarital relationship could be defined as a family within the meaning of the Family Law Act.

[32] G. DOUTHWAITE, UNMARRIED COUPLES AND THE LAW 165-68 (1979); Weitzman, *Legal Regulation of Marriage: Tradition and Change*, 62 CALIF. L. REV. 1169, 1255-58 (1974).

[33] 18 Cal. 3d 684, 557 P.2d 122-23, 134 Cal. Rptr. 831-32.

[34] *Id.* at 684 n.25, 557 P.2d at 123 n.25, 134 Cal. Rptr. at 832 n.25.

survivor of a nonmarital relationship despite an administrator's contention that the agreement should not be recognized because of the meretricious relationship between the couple. In *Tyranski v. Piggins*[35] the court recognized, in a very explicit decision, that:

> Neither party to a meretricious relationship acquires, by reason of cohabitation alone, rights in the property accumulations of the other during the period of the relationship. But where there is an express agreement to accumulate or transfer property following a relationship of some permanence and an additional consideration in the form of either money or of services, the courts tend to find an independent consideration.
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> Thus, a plaintiff who can show an actual contribution of money, pursuant to an agreement to pool assets and share accumulations, will usually prevail. Services, such as cooking meals, laundering clothes, "caring" for the decedent through sickness, have been found to be adequate and independent considerations in cases where there was an express agreement.
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> . . . .
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> Where a meretricious relationship has already been entered upon, to penalize one of the parties by striking down their otherwise lawful promises, will not undo the relationship, nor is it likely to discourage others from entering upon such relationships. It appears on examination of the cases that the courts have, on various theories, allotted to a woman a share of the property in cases thought to be meretricious.[36]

The Supreme Court of California in *In re Marriage of Dawley*[37] also set the stage for dealing with antenuptial agreements where the parties contemplate a marriage of short duration. Rejecting the contention that such an antenuptial agreement is invalid, the court reasoned:

> A rule measuring the validity of antenuptial agreements by the subjective contemplation of parties hazards the validity of all antenuptial agreements.
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> . . . .
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> Such a test, might invalidate virtually all antenuptial agreements on the grounds that the parties contemplated dissolution . . . but it provides no principled basis for determining which

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[35] 44 Mich. App. 570, 205 N.W.2d 595 (1973).

[36] *Id.* at _, 205 N.W.2d at 596-98 (citations omitted).

[37] 17 Cal. 3d 342, 551 P.2d 323, 131 Cal. Rptr. 3 (1976).

antenuptial agreements offended public policy and which do not.[38]

Dawley clearly sets forth the predominant contemporary thought as to antenuptial agreements and public policy:

> In times past antenuptial agreements were most often used by wealthy ment [sic] and women who feared that less wealthy fiances might be marrying for money. In recent years, however, an increasing number of couples have executed antenuptial agreements in order to structure their legal relationship in a manner more suited to their needs and values . . . . Neither the reordering of property rights to fit the needs and desires of the couple, nor realistic planning that takes account of the possibility of dissolution, offends the public policy favoring and protecting marriage. It is only when the terms of an agreement go further—when they promote and encourage dissolution, and thereby threaten to induce the destruction of a marriage that might otherwise endure—that such terms offend public policy.[39]

Basic reform of the laws governing family relationships is an important element of the institutional changes required. So far, reformers have devoted their attention primarily to legal marriage—its formation, its characteristics, and its dissolution. *Marvin, Tyranski, Latham, Carlson* and *Dawley* break new ground in their responses to the legal problems of the unmarried. Perhaps their single most important accomplishment is to permit in those states and other states which follow the legal realization of a prediction about the future of marriages made in 1972 by Dr. Jessie Bernard:[40] "Not only does marriage have a future, it has many futures. There will be, for example, options that permit different kinds of relationships over time for different stages in life, and options that permit different life styles or living arrangements according to the nature of the relationships."[41]

Ironically, court decisions that preserve the option of

[38] *Id.* at 351-52, 551 P.2d at 329, 131 Cal. Rptr. at 9.
[39] *Id.* at 358, 551 P.2d at 333, 131 Cal. Rptr. at 13.
[40] J. BERNARD, THE FUTURE OF MARRIAGE 270-71 (1972).
[41] *Id.*

nonmarital cohabitation on a social and moral par with marriage may ultimately lead to the revitalization of marriage, not to its destruction. The real question is whether the two types of relationships can coexist in the same legal, economic and social structures.[42]

As recently as June 1979, a New Jersey court, confronted with a dispute between two nonmarital partners whose relationship had ended, held in *Kozlowski v. Kozlowski,*[43] a case similar to *Marvin,* that a support agreement between cohabiting but unmarried adults, which is not based on sexual services or on a promise to marry, is enforceable. As in *Marvin,* the New Jersey court emphasized that the decision did not judicially revive a form of common law marriage, proscribed by statute in New Jersey since 1939. The court recognized also that society's mores have

[42] Kay & Amyx, *supra* note 10, at 977.
[43] Kozlowski v. Kozlowski, 80 N.J. 378, 402 A.2d 902 (1979). In 1962 plaintiff, then married, was convinced by defendant, also married, to leave her husband and establish a new life with him. The couple lived together for a total of 15 years and raised three of the four children of their prior marriages. Defendant prospered in business during their cohabitation and provided support for plaintiff and the three children in their household. She provided substantial services, including housekeeping, shopping, acting as the mother to the children, escorting and accompanying defendant and serving as a hostess when necessary to his business activities. The couple separated twice during the 15 years. After the second separation, defendant made it clear that he had no intention of marrying plaintiff, but promised that he would take care of her and provide for her for the rest of her life if she would only come back and resume her functions in the household as she had performed them in the past. Finally, in 1977 defendant requested that plaintiff leave the home and thereafter married a woman 30 years his junior. Plaintiff sued for breach of contract based on defendant's promise to support her. The court held:

> The terms of their agreement [in a case such as this] are to be found in their respective versions of the agreement, and their acts and conduct in the light of the subject matter and surrounding circumstances.
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> The trial judge . . . believed the testimony of [the woman and her witnesses in finding that an express agreement was made to support the woman for life.]
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> . . . .
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> Such agreements by adult nonmarital partners which are not explicitly and inseparably founded on sexual services are enforceable.

Id. at _, 403 A.2d at 906.

changed and that an agreement between adult parties living together is enforceable to the extent it is not based on a relationship proscribed by law nor on a promise to marry. The court also used the equitable considerations suggested in *Marvin* in determining the measure of damage.[44]

The pervasiveness of *Marvin* was again reflected in a Minnesota tax court decision in enlarging the rights of couples who mistakenly think they are married.[45] The court held that a farm woman who had played the role of a dutiful wife for fifteen years without a legal ceremony was a "putative spouse" with the same inheritance rights she would have enjoyed if she had gone through a marriage ceremony. Judge Dena held that the equity principle espoused in *Carlson* and *Marvin* applied to the case before him.

In 1977, Foster and Freed, authorities on family law, felt legal recognition of cohabitation frustrated the parties' intent:

> In the background one may note a larger social and legal problem. Parties to extralegal relationships now seek to obtain the incidents of a legal status they deliberately rejected. To confer legal rights and impose legal duties often is contrary to the expectations of the parties and disregards their contrary intention.[46]

However, in a subsequent article written in 1979, the authors, apparently recognizing the harshness of this position, clarified it: "To which we now add, this does not mean, however, that cohabitants should not be fairly treated, nor that courts in the name of morality should impose inappropriate sanctions against one nonmarital partner and thus

[44] *Id. See also New Wine, supra* note 22, at 4001.

[45] Johnston v. Commissioner of Revenue, 3807, Minn. Nov. 26, 1979. Judge Dena said Ms. Jamison's devoted conduct was enough to make her "putative spouse" under a 1978 Minnesota Law, MINN. STAT. § 418.055. It defines a putative spouse as a person who cohabits with another in the "good faith belief" that they are married. A putative spouse acquires the rights of a legal spouse, but the statute is silent on the rights of inheritance.

[46] Foster & Freed, *Nonmarital Partners: Sex and Serendipity*, 1 J. DIV. 195, 206 (1978). *See generally New Wine, supra* note 22, at 4001.

unjustly enrich the other. The wrongs do not make the right."[47] To which should be added that courts should not, in the name of morality or any anachronistic device, erect judicial barriers which will deny nonmarital partners their day in court.

CONCLUSION

Public policy and the judicial concept of unclean hands have long served as legal precedents, but more often as excuses, for the courts to deny relief to persons seeking redress yet who refuse to bow to moralistic rituals or ill-defined customs. Such judicial practice is clearly anachronistic; it gives little if any thought to the fact that nonmarital and marital relationships can coexist in our society without destroying or abolishing traditional views of marriage and the family structure. Raising judicial barriers against nonmarital partners who seek to settle their disputes in court blatantly ignores contemporary attitudes and philosophies as to human relationships in our rapidly changing society.

The problem may well be that there is an urgent need to redefine these human relationships rather than to impose a penalty because of their unconventional existence. This is undoubtedly the approach that has been adopted by the majority of the courts dealing with such relationships. As we have seen, these courts have faced issues involving nonmarital partners head-on without desecrating the institution of marriage and the family structure. This trend is likely to survive any attempts by the minority to turn back the clock by resorting to fictitious and outmoded legal concepts. Those responsible for implementation and interpretation of family law must respond to changing public attitudes and modern social trends.

Two consenting adults, a man and a woman, decide to live together in extramarital bliss, often with negligible

[47] *New Wine, supra* note 22, at 4009.

thought of the legal or social consequences. However, it is undeniable that in many cases what begins as a simple experiment of love and happiness ends in hopeless frustration with devastating legal consequences. This tragic picture is not totally different from the one painted when an existing marriage breaks down, except that the estranged *married* couple is assured an opportunity to settle their disputes in a court. This difference clearly raises the question as to whether individuals should be penalized just because they have chosen to live in a nonmarital relationship which has ended unhappily. To courts who follow the *Marvin, Latham, Carlson* and *Kozlowski* approach, the answer is "no." On the other hand, to courts persuaded by *Rehak, Hewitt* and *Jarrett,* the answer is "yes," with the added admonishment that such individuals had the opportunity to get married and avoid problems.

It is predictable that few courts will follow the Georgia decision in *Rehak v. Mathis* and hold that the entire agreement in contract cohabitation cases was tainted by the meretricious character of the relationship. Although it appears that the severability doctrine is conducive to damaging the institution of marriage, this doctrine is definitely in line with the contemporary values of a substantial portion of our society.

The trend for most courts is to choose the path that leads to a sensible solution of nonmarital problems. This pattern is in step with contemporary attitudes about alternative living styles. Such courts have recognized the evolution in family law from status position to contract position.[48] This recognition in no way advances the proposition

[48] In Minnesota, in March 1979, a Ramsey County District Judge, following the lead of the *Marvin* case, extended family court jurisdiction to cover a "family" of six in which the mother and the father were never married. He noted that the Minnesota Supreme Court in Carlson v. Olson, _ Minn. _, 256 N.W.2d 249 (1977), which followed the *Marvin* precedent, permitted a division of property sought by a party to an informal living relationship. From the *Carlson* holding, the Judge said, "It is a mere step to dealing with other aspects of the relationship . . . Plaintiff, defendant and their children are a family." Hughes v. Hughes, 2d Dist. file no. 433060, Note L.J. 3/26/79, page 5.

See the following additional cases urging *Marvin*-like relief: Dosek v. Dosek, [1978] 4 FAM. L. REP. (BNA) 2828; Humiston v. Bushnell, 118 N.H. 759, 394 A.2d 844 (1978); Edgar v. Wagner, _ Utah 2d _, 572 P.2d 405 (1977); McCullon v. McCullon, [1978] 5 FAM. L. REP. (BNA) ¶ 2109.

that this alternative style of living should be substituted for or replace the traditional institution of marriage.

The friendlier attitude toward unmarried cohabitation which has resulted from the competing institution's displacement from its traditional pedestal is more accurately described as worldly acceptance rather than mere tolerance. Judges have shown not only that they want to be "with it," but also that they are increasingly sensitive to the equal protection problems raised by different treatment of married and unmarried cohabitors in these sophisticated times.[49] There are no valid reasons to believe that the number of nonmarital relationships will reach such proportions as to destroy the traditional concept of marriage. The trend is toward finding an answer that will permit a large, recognizable segment of our society to exercise freedom of choice, both at the time of entering such a relationship and its termination for whatever reason, except death. The courthouse door should not be closed to nonmarital partners seeking redress when their relationship ends.

[49] *Change, supra* note 1, at 4018.