

## Co-Habitants and Civil Partnerships

### Uncharted Waters in Private International Law Issues

“It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife.”<sup>1</sup> In earlier centuries in England, marriage was essential for full membership of society. “The extended family, to whose interests those of the interrelated nuclear families of parents and children were subordinated. The promotion of family ambition, the advancement of family interest, not the realisation of private ambition and the achievement of personal success, were seen as the common all important social task.”<sup>2</sup> As society has changed, the legal and social status of marriage and that of husband and wife has developed and changed. More recently, whilst some societies have regarded same sex marriage and same sex relationships as offending public policy, others have developed differing legal statuses for such relationships. Private international law (or conflicts of laws, as it is known in North America) has not yet begun to develop in response.

The European Union Commission is well advanced in considering the harmonisation of private international law conflicts rules in relation to succession law issues in the member states to be dealt with by future Brussels IV Regulations. The issue of harmonisation of private international law conflicts rules for unmarried couples and same sex couples, and the possibility of future Brussels III Regulations, is not necessarily more difficult<sup>3</sup>. Strangely, although Brussels III may not be as high up the list on the Hague Programme, the Commission may find it easier to resolve than the possible Brussels IV Regulations in relation to succession issues.

### The interaction of Matrimonial Law with Succession Law

The issues of Matrimonial property regimes, spousal rights and prenuptial agreements dealt with by the previous speaker equally affect same sex marriage and registered partnerships.

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<sup>1</sup> Jane Austen, *Pride and Prejudice*, opening sentence.

<sup>2</sup> Ivy Pinchbeck and Margaret Hewitt, *Children in English Society*.

<sup>3</sup> *Studies on Matrimonial Property Regimes and the Property of Unmarried Couples in PIL and Internal Law*

Although the Hague Convention XXVI on celebration and recognition of the validity of marriages concluded on 14 March 1978 has only been signed by Egypt, Finland and Portugal and ratified by Australia, Luxembourg and Netherlands and was not designed to apply to same sex marriages or registered partnerships, the language of the convention is gender neutral and refers to 'spouses', rather than to husband and wife.

Article 3 states that a marriage shall be celebrated

(1) where the future spouses meet the substantive requirements of the internal law of the State of celebration and one of them has the nationality of that State or habitually resides there; or

(2) where each of the future spouses meets the substantive requirements of the internal law designated by the choice of law rules of the State of celebration.

By Article 9 a marriage validly entered into under the law of the State of celebration or which subsequently becomes valid under that law shall be considered as such in all Contracting States.

The convention is, however, likely to influence thinking as to recognition issues for foreign same sex marriages and registered partnerships even amongst states that have not ratified.

However, it must be noted that Article 14 allows that 'a Contracting State may refuse to recognize the validity of a marriage where such recognition is manifestly incompatible with its public policy ("ordre public").'

As stated in the Study for the EU Commission Director General of Justice and Home Affairs Justice and Home Affairs on matrimonial property regimes and the property of unmarried couples in private international law and internal law<sup>4</sup> "Il est indiscutable que l'ordre public est le talon d'Achille d'une évolution ultérieure du droit international privé dans ce domaine sensible"<sup>5</sup>

In the Note drawn up by the Permanent Bureau of the Hague Conference *Private International Law Aspects of Cohabitation outside Marriage and Registered Partnerships* of May 2000<sup>6</sup> the view was expressed that the private international law aspects of cohabitation outside marriage should remain on the Agenda of the Conference, to be considered along with the private international law aspects of registered partnerships. It was considered still premature to think in terms of developing a new convention on either or both subjects. Nevertheless, the time was thought to have arrived to begin a more intensive consideration of the options and of the feasibility of moving towards a uniform approach in private international law.

## Same Sex Marriage

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<sup>4</sup> Studies on Matrimonial Property Regimes and the Property of Unmarried Couples in PIL and Internal Law

<sup>5</sup> paragraph 2.1.4 page 223

<sup>6</sup> Preliminary Document No 9 of May 2000

Marriage between persons of the same sex is now lawful in:

## **Belgium**

Since 1 June 2003<sup>7</sup>. At that date it was made clear that same sex marriage was not lawful under Belgian law, if the personal law of one of the parties prohibited same sex marriage. However, this rule is now not to be applied if one of the parties is a Belgian national or habitually resident in Belgium<sup>8</sup>.

## **Canada**

Same sex marriage was permitted first in Ontario, British Columbia and Manitoba in June 2003, and subsequently extended to Nova Scotia, Quebec, Saskatchewan and the Yukon. Alberta was resisting. Since 20 July 2005 same sex marriage is lawful throughout the whole of Canada, but subject to the individual provinces making the necessary provisions<sup>9</sup>.

## **Netherlands**

Since 1 April 2001<sup>10</sup>. Under Dutch law one party must be a Dutch national or resident. Same sex marriage is however lawful even if the personal law of one or both parties prohibits same sex marriage.<sup>11</sup>

## **Spain**

Since 3 July 2005 same sex marriage is lawful throughout the whole of Spain. If one party is a Spanish national, or if both parties are resident in Spain, same sex marriage is lawful, even if the personal law of the other party prohibits same sex marriage. It was originally unclear whether same sex marriage was lawful if neither party was a Spanish national.

Shortly after the law was passed, doubt arose about the legal status of marriage to non-Spaniards, when a Spaniard and an Indian national living in Catalonia were denied a marriage licence on the grounds that India does not permit same-sex marriage. However, some days later also in Catalonia, another judge married a Spanish woman with her Argentinian national partner. This judge disagreed with his colleague's decision and gave preference to the right of marriage over the fact that the laws of the country of origin of the other woman don't allow same-sex marriage.

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<sup>7</sup> Loi du 13 février 2003

<sup>8</sup> government circular 23 janvier 2004 and the Article 46(2) of the Belgian Code on private international law

<sup>9</sup> Civil Marriage Act [Bill C-38] but see Timothy Matthew's helpful article in STEP journal Volume 13 Issue 5 page 14.

<sup>10</sup> The Same Sex Marriage Act of 21 Dec 2000

<sup>11</sup> [www.justitie.nl/english/themes/family\\_law/index.asp](http://www.justitie.nl/english/themes/family_law/index.asp)

On 27 July 2005, the Junta de Fiscales de Sala, issued an opinion that Spanish nationals can marry same-sex foreigners from countries that do not permit same-sex marriage. A ruling published in the Official State Bulletin stated:

a marriage between a Spaniard and a foreigner, or between foreigners of the same sex resident in Spain, shall be valid as a result of applying Spanish material law, even if the foreigner's national legislation does not allow or recognize the validity of such marriages.

According to the instructions provided by the Ministry of Justice (Dirección General de Registros y Notariado), Spanish Consulates abroad are entitled to register a same-sex marriage. At least one of the members of the couple must be a Spanish citizen, resident in the Consular demarcation. However, the marriage itself could only take place at the Consulate if local laws recognise same-sex marriages. In other cases, the partners must marry in Spanish territory.

### **United States of America: Massachusetts**

Same sex marriage has been lawful in Massachusetts since 17 May 2004, but subject to a possible constitutional vote in November 2006 or later.

### **Republic of South Africa**

Same sex marriage will become lawful by 1 December 2006.

In the case of *Minister of Home Affairs and Another v Fourie and Another*<sup>12</sup>, Ms Fourie and Ms Bonthuys, of Pretoria, complained that the law excluded them from marriage. The common law and section 30(1) of the Marriage Act were found to be inconsistent with sections 9(1) and 9(3) [equality] and 10 [dignity] of the Constitution, to the extent that they make no provision for same-sex couples to enjoy the status, entitlements and responsibilities they accord to heterosexual couples.

The court held, that there were at least two different ways in which the legislature could possibly deal with the gap that existed in the law. The first was to follow the simple proposal to read in the words “or spouse” after the words “or husband” in the Marriage Act.

The second possibility was a more complex and comprehensive proposal put forward in a memorandum by the South African Law Reform Commission<sup>13</sup> which covered a lot of the same ground as the Canadian Law Commission

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<sup>12</sup> *Minister of Home Affairs and Another v Fourie and Another*, with Doctors For Life International (first amicus curiae), John Jackson Smyth (second amicus curiae) and Marriage Alliance of South Africa (third amicus curiae) Constitutional Court - CCT 60/04 – 1 December 2005

<sup>13</sup> Report on Project 109 – May 2001

Research Paper *Registered Partnerships: A Model for Relationship Recognition* by Nicole LaViolette<sup>14</sup>. It called for a new generic marriage act (to be called the Reformed Marriage Act) that would be enacted to give legal recognition to all marriages, including those of same and opposite-sex couples and irrespective of the religion, race or culture of a couple. However, the current Marriage Act would not be repealed, but renamed, only (to be called the Conventional Marriage Act). For the purposes of this Act, the status quo would be retained in all respects and legal recognition in terms of this Act would only be available to opposite-sex couples. It would entail no separation of the religious and civil aspects of marriage, and ministers of religion (or religious institutions) would have the choice to decide in terms of which Act they wish to be designated as marriage officers. The state would designate its marriage officers in terms of the Reformed Marriage Act.

Under this second possibility the law in South Africa would therefore make provision for a marriage act of general application together with a number of additional, specific marriage acts for special interest groups such as couples in customary marriages, Islamic marriages, Hindu marriages and now also opposite-sex specific marriages.

In the circumstances, the Court held that it would be appropriate to give Parliament one year from the date of the delivery of the judgment to cure the defect. If, however, the South African Parliament fails to cure the defect within twelve months, i.e. by 1 December 2006 the words “or spouse” will automatically be read into section 30(1) of the Marriage Act. In this event the Marriage Act will, without more, become the legal vehicle to enable same-sex couples to achieve the status and benefits coupled with responsibilities which it presently makes available to heterosexual couples.

## **Civil Partnerships and Overseas Relationships**

### **Registered Partnerships, Civil Unions and other Relationships.**

Europe generally uses the term ‘registered partnership’, as compared to the North American term ‘civil union’. The United Kingdom, being a group of small islands in the Atlantic somewhere between mainland Europe and North America, has chosen to use the expression ‘civil partnership’.

Dr. Kees Waaldijk<sup>15</sup> in his helpful classification of same sex legal relationships, describes such partnerships or unions either as **Quasi-marriages** or as **Semi-marriages**, whilst Nicole LaViolette in her Law Commission of Canada paper *Registered Partnerships: A Model for Relationship Recognition*<sup>16</sup> defines them either as the **Marriage Minus Model** or the **Blank Slate Plus Model**.

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<sup>14</sup> August 2001

<sup>15</sup> Dr Kees Waaldijk of Leiden University - “Taking Same-Sex Partnerships Seriously - European experiences as British perspectives?” 5th Stonewall Lecture 6th March 2002

<sup>16</sup> See note 24

## **Quasi-Marriages - the Marriage Minus Model**

Such relationships have rights, as near as may be, identical to those, which the parties would have, if they had been married. Although, it is only in the Netherlands, Denmark, Finland, Germany and Sweden that such relationships are also subject to matrimonial property regimes and the same issues as to community or separation of assets, I would suggest that Belgium, all the Nordic countries and the relevant states and provinces of North America, together with New Zealand (and the proposal for ACT) and the United Kingdom are most usefully included in this definition.

### **Australia: Australian Capital Territory (ACT)**

The Civil Union is to be introduced with effect from March 2006. The proposed ACT legislation will be closely modelled on the New Zealand Act and will be available to both same sex and mixed sex couples. There will be no difference in legal effect between a civil union and a marriage made under the *Commonwealth Marriage Act 1961*, which means that laws that presently distinguish between married spouses and other domestic partners will need to be amended to accord equal treatment to civil-union partners.

The basis on which a birth, death or marriage is registered in the ACT is simply that the event took place in the ACT. The same will apply to civil unions and there will be no restrictions on nationality or residence.

### **Belgium and Netherlands<sup>17</sup>**

The registered partnership is an option additional to that of same sex or mixed sex marriage and is available to both mixed sex and same sex couples. Interestingly, 90% of Netherlands registered partnerships now being entered into are between mixed sex couples. One party must be a national of or resident in the state. In the Netherlands it is possible to convert a marriage (whether a Dutch marriage or of a different country) into a registered partnership and a high proportion of registered partnerships, are such conversions. Such partnerships can then be dissolved by mutual agreement. Such 'Flash Divorces'<sup>18</sup> as they are called, have difficulties since the conversion is generally not recognised in other jurisdictions and the subsequent dissolution of the registered partnership may also not be recognised outside the Netherlands. In 2004, 5,000 marriages were dissolved in the Netherlands in this way. Of conversions of marriages to registered partnerships generally, 60% of were subsequently dissolved within one month and 90% within six months.

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<sup>17</sup> Law of 5 July 1997

<sup>18</sup> Flistsheidingen

## Canada

**Alberta** - adult interdependent relationship, **Manitoba** - common-law relationship, **Nova Scotia** - registered domestic partnership, and **Quebec** - civil union. Each of these is open to both same sex and mixed sex couples. So far as I am aware there are no nationality, domicile or residence requirements.

## Denmark<sup>19</sup>

*Ægteskab og registreret partnerskab.* Registered partnerships were introduced in Denmark in 1989, the first in the world. They have almost all the same qualities as marriage, but is only available to same sex couples.

To be allowed to enter into registered partnership in Denmark, at least one of the two parties must be a Danish citizen and a resident of Denmark, or both parties must have been residents of Denmark for at least two years. Citizens of Norway, Sweden, Iceland, Finland and Holland equate to Danish citizens in this respect. This list is adjusted whenever a new country introduces registered partnerships/ same sex marriage.

In general, registered partnerships have the same legal and fiscal rights and obligations as for a mixed sex marriage, with four exceptions:  
registered partners cannot adopt, with the exception that one party can adopt the biological children of the other  
registered partners cannot have joint custody of a child, except by adoption  
laws making explicit reference to the sexes of a married couple don't apply to registered partnerships  
regulations by international treaties do not apply unless all signatories agree.

Dissolution for registered partners follows the same rules as divorces for marriage. As of 1 January 2002 there were more than 2,000 registered partnerships in Denmark, of which 220 had children.

## Finland<sup>20</sup>

Registered Partnerships were made lawful from 1 March 2002. The legislation grants similar rights and responsibilities as married partners. Registration and dissolution is undertaken in a similar manner to marriage. Joint custody is allowed. Immigration rights to a foreign partner are granted. Registration is available only to same-sex couples.

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<sup>19</sup> Registered Partnership Act of 7 June 1989

<sup>20</sup> Act on Registered Partnerships (950/2001 and amendments up to 1229/2001)

In common with other Nordic countries, Section 10 of the Act sets out that a Partnership may be registered in Finland only if at least one of the partners is a Finnish citizen and habitually resident in Finland; or both parties have been habitually resident in Finland for two years immediately before the registration. Citizenship of a foreign state whose legislation allows for the registration of partnership with mainly the same legal effects as provided in the Act shall correspond to Finnish citizenship. Such foreign states are designated by Governmental Decree.

Section 12 states that the registered partnership of two persons of the same sex that has been registered in a foreign state shall be valid in Finland if it is valid in the state where it was registered.

## **Greenland**

The Danish registered sex partnership law was extended to Greenland by a vote in the Danish Parliament in 1996, and entered in force the same year.

## **Iceland<sup>21</sup>**

Registered partnerships for same sex couples were introduced in Iceland in 1996. One party must be a national of and resident of the state, although nationals of other Nordic states, may be eligible.

The legislation grants the full range of protections, responsibilities and benefits as marriage. Joint custody of children is permitted, where one partner already has custody of the child. Only available to same-sex couples. A registered partner can adopt the other partner's child, unless the child is adopted from a foreign country. No joint adoption for registered same-sex partners is allowed.

A government committee is currently looking into allowing same-sex partners to get married and adopt children.

## **New Zealand<sup>22</sup>**

Civil Unions in New Zealand were ratified on 9 December 2004 for both same sex and mixed sex couples, effective from 26 April 2005. There does not appear to be any requirement as to nationality or residence.

## **Norway<sup>23</sup>**

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<sup>21</sup> Registered Partnership Law of 12 June 1996

<sup>22</sup> Civil Union Act 2004 - 2004 No 102

<sup>23</sup> Registered Partnership Act of 30 April 1993 nr 40

Registered partnership became lawful on 1 August 1993 and grants the same range of protections, responsibilities and benefits as marriage, including arrangements for the breakdown of the relationship. It is only available to same-sex couples. The Act states that the articles in the Adoption Act relating to married couples shall not apply for registered partners. Under the Act on Biotechnology, artificial insemination can only be given to a married couple or cohabitants of opposite sexes. In 2002, however, registered partners were allowed to adopt children of their partner.

Section 2 of the Act states that a partnership may only be registered if either at least one of the parties is a Norwegian national and one of them is resident in Norway. Being a national of Denmark, Iceland or Sweden is considered equivalent to being a Norwegian national. The King may decide that nationality of another country which has legislation on registered partnership that corresponds to Norwegian legislation shall be equivalent to Norwegian nationality.

or at least one of the parties has been resident in Norway for two years immediately prior to registration.

## **Sweden<sup>24</sup>**

Registered partnership became lawful in 1995. The Registered Partnership Act grants full range of protections, responsibilities and benefits as marriage, including arrangements for the breakdown of the relationship. Only available to same-sex couples. Same-sex registered partners can adopt jointly.

In vitro fertilization for lesbian couples was allowed in 2005. Sweden also has a separate and more limited Domestic Partnership Act for both unmarried/unregistered same sex and mixed sex couples. From 1988 to 2003 there were two different laws, one for mixed sex, and one for same sex couples, which now is united into one single law.

In 2004 the Parliament instituted a committee to look into the possibility of opening marriage to same sex couples.

## **Switzerland**

*Eingetragene Partnerschaft.*<sup>25</sup> The Federal Registered Partnerships Act enables same sex couples to formalise their relationships. The new Act was passed by the Swiss parliament on 18 June 2004 and adopted by the people and the states in the referendum of 5 June 2005. The Federal Office of Justice is currently formulating the implementing provisions, which will enter into force alongside the Act, probably on 1 January 2007.

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<sup>24</sup> Registered Partnership Act of 23 June 1994

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[http://www.ofj.admin.ch/bj/en/home/themen/gesellschaft/gesetzgebung/eingetragene\\_partnerschaft.html](http://www.ofj.admin.ch/bj/en/home/themen/gesellschaft/gesetzgebung/eingetragene_partnerschaft.html)

In some key areas, such as inheritance, social insurance and occupational pension schemes, same sex couples living in registered partnerships will have the same rights and obligations as mixed sex married couples. Unless otherwise agreed, however, each partner will retain the right of disposal over their own assets. Registered partners will not be permitted to adopt children, nor may they benefit from medically assisted reproduction technologies, such as IVF.

Same sex marriages (and registered partnerships?) formed outside Switzerland will be acknowledged as registered partnerships.

## **United Kingdom**

Civil Partnership Act 2004<sup>26</sup> (the 'CPA 2004') became effective on 5 December 2005. The Act has 264 sections, 30 schedules and runs to 429 pages. Numerous Statutory Instruments have also now been issued.

Although, only same sex couples, are able to register in the United Kingdom as civil partners, there is no requirement as to nationality, domicile or habitual residence. All that is required, in England & Wales, in addition to the usual notice provisions, is that the parties have resided in England & Wales for 7 days before the registration. There is no such residence requirement in Scotland or Northern Ireland. The United Kingdom civil partnership, will therefore be available to many same sex couples, whose own jurisdictions whether by nationality, domicile or habitual residence, may not themselves have any form of legal relationship similar to the civil partnership and which will not recognise the legal relationship created, whether for reasons of public policy or some other reason. This is likely substantially to increase the number of conflicts issues, which will arise in the future.

I deal with the United Kingdom in more detail, later.

## **United States of America:**

### **Vermont**

On 25 April 2000, Vermont legislators passed the Civil Union law HB847 which became effective from 1 July 2000. Civil union status is available to two persons of the same sex who are not related to one another. Parties to the civil union must be at least 18 years old and competent to enter a contract. If a person is under guardianship, he or she must receive written consent of the guardian. To enter a civil union, a person may not already be a party to another civil union or a marriage.

Many of the legal benefits, protections and responsibilities of spouses also apply to parties to a civil union:

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<sup>26</sup> c.33

laws relating to title, tenure, descent and distribution, intestate succession, waiver of will, survivorship, or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property, including eligibility to hold real and personal property as tenants by the entirety;  
probate law and procedure, including non probate transfer;  
adoption law and procedure;  
terminal care documents, and durable power of attorney for health care execution and revocation;  
laws relating to taxes imposed by the state or a municipality, but not federal taxes;  
the homestead rights of a surviving spouse and homestead property tax allowance;

## **Connecticut<sup>27</sup>**

On 20 April 2005, Connecticut passed legislation allowing same-sex couples to enter into civil unions, with effect from 1 October 2005.

A person may enter into a civil union if that person is at least 18 years of age, is of the same sex as the other party to the civil union, is no more closely related to the other than first cousin and is not a party to another civil union or marriage.

Sec. 13. All civil unions in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such civil union in this state and the civil union is celebrated in conformity with the law of that country; or (2) the civil union is celebrated in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his or her consular jurisdiction, by any ordained or licensed member of the clergy engaged in the work of the ministry in any state of the United States or in any foreign country.

Sec. 14. Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.

Sec. 15. Wherever in the general statutes the terms "spouse", "family", "immediate family", "dependent", "next of kin" or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a of the general statutes, as amended by this act, subdivision (4) of section 45a-727a, sections 46b-20 to 46b-34, inclusive, section 46b-150d of the general statutes, as amended by this act,

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<sup>27</sup> File No. 379

and section 14 of this act, the term "marriage" is used or defined, a civil union shall be included in such use or definition.

## **New Hampshire**

To follow? Probably, not now. Amid controversy, the state commission report released on 1 December 2005 recommended that the New Hampshire Legislature should not permit either same sex marriage or civil unions, but only allow minimal benefits for same-sex couples.

## **Semi-Marriages – the Blank Slate Plus Model**

Such relationships give some rights, but less than if the parties were actually married, and are often modelled on a contractual arrangement so that the parties can decide for themselves as to the nature of such arrangements.

## **Andorra<sup>28</sup>**

*Unió estable de parella.* In March 2005, the Principality of Andorra first recognized the right of same sex couples, as well as mixed sex couples, to join in a form of PACS – the stable union.

The couple must not be related in direct line by consanguinity or adoption, or in the collateral line by consanguinity to the fourth degree. Both partners must be adults or emancipated minors; must not be already married or in an existing stable union; must live as a couple; and at least one partner must be a resident of Andorra or an Andorran national.

The stable union is registered six months after a declaration is lodged and is then entered into the Register of Stable Unions. The parties make a private pact setting out property and personal relations arising from the relationship and the rights and obligations of the relationship. A couple in a stable union have legal rights and responsibilities including the obligation to support one another; the right to compensation and maintenance in the event of a break up; the ability to adopt a child subject to the same rules as a married couple; and the same rights as spouses for the purposes of social security and employment law.

A stable union ends by the marriage of either party; the death of either party; a unilateral declaration by formal written notification notified to the other party; or a mutual declaration.

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<sup>28</sup> Llei 4/2005, 21 February, qualificada de les unions estables de parella.

## **Australia: Tasmania<sup>29</sup>**

Significant Relationships and Caring Relationships. Since 1 January 2004 the Relationships Act 2003 allows same sex and mixed couples to register their union with the state's Registry of Births, Death and Marriages. The Act gives couples rights in making decisions about their partner's health, provides for guardianship when a partner is incapacitated, gives equal access to their partner's public sector pensions and allows a partner to adopt the biological child of their partner.

Section 11. Two adult persons –

(a) who are domiciled or ordinarily resident in the State; and

(b) who are not married or a party to a deed of relationship; and

(c) who are in a significant or caring relationship –

may apply to the Registrar, in a form approved by the Registrar, for registration of a deed of relationship in relation to that significant or caring relationship.

## **Croatia**

Rights for unregistered cohabiting same-sex couples have been available since 2003. Same-sex partners who have cohabited for at least of 3 years have the same rights as enjoyed by unmarried cohabiting mixed sex partners (inheritance, financial support).

Parliament is now considering a bill creating registered partnerships with the same rights as marriage.

## **France<sup>30</sup>**

*Pacte Civile de Solidarité*, known as the PACS. Introduced in part in response to the previous use by same sex couples of *adoption simple*<sup>31</sup>. The PACS is available to both mixed sex and same sex couples, although with very limited rights and tax benefits. One party must be a French national or habitually resident in France.

## **Germany<sup>32</sup>**

*Lebenspartnerschaft*. Since 1 August 2001, the registered partnership of same-sex couples has been recognised. *Eingetragene Lebenspartnerschaft*,

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<sup>29</sup> Relationship Act 2003 (No 44 of 2003)

<sup>30</sup> Law 99-944 of 15<sup>th</sup> November 1999

<sup>31</sup> under Article 360 of the Code civil

<sup>32</sup> 9 Bundesgesetz Blatt 266 of 16<sup>th</sup> February 2001

grants same-sex couples who specifically apply for it a subset of the rights and obligations connected with same sex marriage.

On 17 July 2002, the Constitutional court ruled that there were no legal obstacles to giving these partnerships the same status, with the same rights and obligations, as mixed sex marriages. The court clarified that mixed sex marriages and same sex registered partnerships *could* be given entirely equal status in Germany. However, despite this ruling, the registered partnership and marriage do not currently have equal status.

On 12 October 2004 the Bundestag passed the *Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts* (Life Partnership Law (Revision) Act), increasing the rights of registered partners to include, amongst other things, the ability to adopt a child of a registered partner, but excluding the same tax benefits as in a mixed sex marriage.

A matrimonial property regime applies, but the regime is different to that for a mixed sex married couple.

## **Hungary**

Unregistered cohabitation rights were granted in 1996.

The law applies to couples living together in an economic and sexual relationship, including same-sex couples. No official registration is required. The law gives some specified rights and benefits to two persons living together. These rights and benefits are not automatically given - they must be applied for to the social department of the local government in each case. Amendment to the Civil Code: "Partners – if not stipulated otherwise by law – are two people living in an emotional and economic community in the same household without being married."

The Hungarian government is considering extending the rights of people living in unregistered cohabitation and making available registration of cohabitation, with effect from 2007, with the introduction of the new Civil Code. No draft of the new code has yet been released.

A bill has been introduced to Parliament by the junior coalition partner to make the registration of cohabitation possible even before the adoption of the new Civil Code. The proposal would give extended rights connected to inheritance and housing to couples who register.

## **Israel**

Israel has granted unregistered cohabitation for same-sex couples since 1994, a status that until then was only recognised for mixed sex couples. Following various court decisions, same sex couples enjoy various benefits

given to mixed sex couples (1994 –1996) and the right of same sex partners of civil service employees to survivor benefits (1998).

Non-biological parents can register guardianship of their partner's child (2001); a January, 2005 supreme court ruling has made it possible for a partner to adopt a same-sex partner's biological child, and the courts continue to grant more and more rights for same sex couples.

The Israeli government is considering whether to recognise full registered partnerships.

### **Luxembourg<sup>33</sup>**

*Partenariat enregistré, Eingetragene Partnerschaft* for same-sex and mixed sex couples were legalised in 2004. Registered partners have many of the rights of married couples in relation to access to welfare benefits and also have fiscal advantages, but not the same as married couples. They do not have the right jointly to adopt children.

### **Slovenia**

The Law on Registered Same-Sex Partnership was adopted on 22 June 2005. The law covers only property relations, the right/obligation to support a socially weaker partner, and inheritance rights to a degree. It does not grant any rights in the area of social security (social and health insurance, pension rights) and it does not confer the status of a next-of-kin to the partners. The law will become effective in July 2006.

A more comprehensive Registered Partnership Bill passed the first reading in parliament in July 2004 but was rejected by parliament during the second reading in March 2005. The Bill would have provided for all rights inherent to marriage apart from joint adoption rights.

### **Spain**

Regions of **Catalonia** and **Madrid**.

### **Switzerland**

Cantons of **Genève** and **Zürich**.

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<sup>33</sup> Loi relative aux effets légaux de certains partenariats

## **United States of America**

### **California<sup>34</sup>**

Domestic Partners. Since 1 January 2005.

#### Section 297.

(a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(4) Both persons are at least 18 years of age.

(5) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

(6) Both persons are capable of consenting to the domestic partnership.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

### **Hawaii<sup>35</sup>**

#### Reciprocal Beneficiary.

There are no state residency or U.S. citizenship requirements.

The two individuals entering into a reciprocal beneficiary relationship must both be at least 18 years of age.

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<sup>34</sup> Family Code - Section 297-297.5

<sup>35</sup> Reciprocal Beneficiaries Act 1997 HB 118

Neither of the two individuals entering into a reciprocal beneficiary relationship can already be married nor be a party to another reciprocal beneficiary relationship.

The two individuals entering into a reciprocal beneficiary relationship must be prohibited by state law from marrying one another, which include but are not limited to relationships such as brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, widowed mother and her unmarried son, and two persons of the same sex/gender.

### **Maine<sup>36</sup>**

Effective 30 June 2004 established the concept of domestic partners in Maine law available to both same sex and mixed sex couples. Under the law, registered domestic partners are accorded a legal status similar to that of a married person with respect to matters of probate, guardianships, conservatorships, inheritance, protection from abuse, and related matters.

### **New Jersey<sup>37</sup>**

Domestic Partnership. Effective 10 July 2004. Couples wishing to register a Domestic Partnership must be same sex couples at least 18 years of age or opposite sex couples who are both 62 years of age or older. Couples must meet the following requirements:

Share a common residence in New Jersey or any other jurisdiction provided that at least one of the applicants is a member of a New Jersey State-administered retirement system;

Neither applicant is in a marriage recognized by New Jersey law or a member of another domestic partnership;

Neither person is related to the other by blood or affinity up to and including the fourth degree of consanguinity;

Neither applicant has terminated another domestic partnership within the previous 180 days. (This prohibition shall not apply when the previous partnership ended due to the death of the other partner).

### **United Kingdom in detail**

I now look at the United Kingdom in more detail to highlight some of the issues involved.

Part 5 of Chapter 2 of the CPA 2004 deals with overseas matters.

Within Part 5, Section 212 defines an “overseas relationship” as being either a relationship, which meets the general conditions of section 214 or is a specified relationship under section 213 - i.e. one of the particular

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<sup>36</sup> P.L. 2003, c. 672

<sup>37</sup> New Jersey Domestic Partnership Law N.J.S.A. 26:8A-6

relationships set out in Schedule 20. There is provision to enable the categories included in Schedule 20 to be extended at a later date.

The original Schedule 20 relationships were stated to be:

Belgium - statutory cohabitation **and marriage**  
Nova Scotia - domestic partnership  
Quebec - civil union  
Denmark - registered partnership  
Finland - registered partnership  
France - civil solidarity pact  
Germany - life partnership  
Iceland - confirmed cohabitation  
Netherlands - registered partnership **and marriage**  
Norway - registered partnership  
Sweden - registered partnership  
Vermont - civil union

By the Civil Partnership Act 2004 (Overseas Relationships) Order 2005<sup>38</sup> Canadian, Massachusetts and Spanish same-sex marriages and Andorran unió estable de parella, Luxembourg registered partnerships, New Zealand civil unions, Tasmanian significant relationships, Californian domestic partnerships, Connecticut civil unions and Maine and New Jersey domestic partnerships (but not Alberta adult interdependent relationships or Manitoba common-law relationships) were specifically added to the Schedule 20 list.

In any event, other relationships which qualify under the general conditions set out in section 214, are automatically recognised as overseas relationships.

The fact that pre-existing Overseas Relationships, automatically became recognised as Civil Partnerships in the United Kingdom on 5 December 2005<sup>39</sup> would have also meant that a Will made prior to 5 December 2005 by such a partner domiciled in England and Wales would have been revoked on that day, unless stated to have been made in expectation of the specific Overseas Relationship being formed. Originally, paragraph 4 of the Civil Partnership (Treatment of Overseas Relationships) Order 2005<sup>40</sup> slightly amended that rule. Wills made before the formation of the pre-existing Overseas Relationship were to be saved from revocation, whilst Wills made after the formation of the Overseas Relationship, but before 5 December 2005, were not. That Order was subsequently amended by the Civil Partnership (Treatment of Overseas Relationships No.2) Order 2005<sup>41</sup>. Now it is clear that all Wills made before 5 December 2005 by persons domiciled in England and Wales at 5 December 2005 are now not revoked on that date by the automatic recognition of a previously registered Overseas Relationship.

It might be thought that it is not clear whether Schedule 4 to the CPA 2004 permits a Will to be made in expectation of forming an Overseas Relationship,

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<sup>38</sup> SI 2005 No3135

<sup>39</sup> section 215(3) CPA 2004 and SI etc

<sup>40</sup> SI 2005 No 3042

<sup>41</sup> SI 2005 No 3284

in the same way that a Will is not to be revoked if made in expectation of forming a Civil Partnership. In view of the provisions of s 1(1) it is likely that a Will made in expectation of forming an Overseas Relationship, would not be revoked on the formation of the Overseas Relationship.

An Overseas Relationship is only valid, however, if the parties are of the same sex as defined under United Kingdom law<sup>42</sup>, (however, this does not prevent the exercise of any enforceable European Community right<sup>43</sup>) and if the parties are of the same sex under the relevant law and if neither of them is already a civil partner or already lawfully married<sup>44</sup>. If the parties have a valid previous Overseas Relationship with each other under a different law, for example a PACS in France, this will invalidate a subsequent Overseas Relationship with each other e.g. a subsequent same sex marriage in the Netherlands.

The relevant law for the purposes of Chapter 2 of Part 5 CPA 2004 (i.e. sections 212 to 218 inclusive) is defined by section 212(2) as meaning the law of the country or territory where the relationship is registered (including its rules of private international law).

There is a general public policy exception under section 218 CPA 2004. An overseas relationship is not valid, if it would be manifestly contrary to public policy in the United Kingdom to recognise the capacity under the relevant law of one or both of the parties to enter into the relationship. However, one wonders whether this provision may be in contravention of article 14 of the European Convention.

Various capacity issues are dealt with; the differing restrictions in Part 1 of Schedule 1 CPA 2004 which apply to certain prohibited degrees of relationship if one party is either under the age of 18 or if under the age of 21 which apply to Civil Partnerships formed in the United Kingdom, will also apply to an Overseas Relationship, even if valid under the relevant law, if one of the parties was domiciled in a United Kingdom constituent unit, at the time the Overseas Relationship is formed or at 5 December 2005, if formed earlier.

Chapter 3 of Part 5 of CPA 2004 deals with overseas dissolutions of civil partnerships. An overseas dissolution will only be recognised if:  
the dissolution was made by means of proceedings, if it is effective under the law of the state where obtained, and if either partner is habitually resident, a national or domiciled there  
the dissolution was not made by means of proceedings, if it is effective under the law of the state where it is obtained, and if each partner is domiciled there at the date of dissolution or one partner is so domiciled and the other is domiciled in a country which recognises such dissolution, and, in addition,

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<sup>42</sup> section 216 CPA 2004

<sup>43</sup> section 216(6) CPA 2004 and see section 260 CPA 2004 - European Community obligations.

<sup>44</sup> section 212 CPA 2004

provided that neither partner is habitually resident in the United Kingdom for the period of one year before the date of dissolution<sup>45</sup>.

There is however no definition of domicile. Section 237(1) CPA 2004 states that 'a civil partner is to be treated as domiciled in a country if he was domiciled in that country (a) according to the law of that country in family matters<sup>46</sup>, or (b) according to the law of the part of the United Kingdom in which the question of recognition arises'. This is only for the purposes of sections 235 and 236, i.e. recognition of an overseas dissolution and does not define the law of the part of the United Kingdom.

The new Brussels II *bis* Regulations<sup>47</sup>, which were effective from 1 March 2005, are again, gender neutral. The Commissioner for Justice and Home affairs Sr. Vitorino has said that, "it cannot be excluded that divorces of same sex couples would fall within the scope of the Regulation."<sup>48</sup> The Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005<sup>49</sup> made under section 219 provide for Brussels II *bis* and other matters to apply to Civil Partnership issues.

If a member of a same sex couple is currently domiciled or habitually resident in a United Kingdom constituent unit and considering an informal dissolution of an existing Overseas Relationship (e.g. the winding up of a French PACS by agreement, or the notarial dissolution of a Dutch registered partnership), they should bear in mind that only a formal dissolution will be recognised under United Kingdom law, unless both partners become non domiciled and have not been resident in the United Kingdom for one year before the dissolution.

## **Succession Law Issues**

Connecting factor issues of domicile, nationality and habitual residence will become more important for same sex couples. The CPA 2004 extends existing intestacy, succession and rights under the Inheritance (Provision for Family & Dependents) Act 1975 for existing mixed sex spouses, to civil partners<sup>50</sup> although of course, currently only in relation to the estates of deceased persons domiciled in England & Wales at the date of their death.

In particular section 1(1B) CPA 2004 extends the existing rights under Inheritance (Provision for Family & Dependents) Act 1975 for persons living together as spouses for the whole of 2 years before the death, to include a "person living in the same household as the deceased as the civil partner of the deceased". It will be interesting to see how this area of the law develops and how the term "living ....as the civil partner" comes to be interpreted.

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<sup>45</sup> sections 234 and 235 CPA 2004

<sup>46</sup> Note the use of the concept of family domicile

<sup>47</sup> Council Regulation (EC) No 2201/2003 of 27 Nov 2003

<sup>48</sup> OJ 2003 C28, 002.

<sup>49</sup> SI 2005 No 3334

<sup>50</sup> Schedule 4 CPA 2004

A civil partner must be of the same sex and some relationships are proscribed, so that, for example a party may not enter into a civil partnership with the sibling of his or her parent<sup>51</sup>. However, for example a widow living with her divorced daughter-in-law both of whom are over 21 could enter into such a partnership. If they happen to live together and one of them dies, could the survivor make a claim under the amended 1975 Act?

## **Tax Issues**

The United Kingdom tax effects of a Civil Partnership or Overseas Relationship have been widely dealt with. The Tax and Civil Partnership Regulations 2005<sup>52</sup> and the Tax and Civil Partnership (No. 2) Regulations 2005<sup>53</sup> have the effect that civil partners are dealt with in an equivalent way to married persons.

A Civil Partnership or Overseas Relationship may or may not have any effect for tax purposes in other jurisdictions.

In particular it should be noted that treaty relief whether for Income or Capital Gains Taxes or Inheritance Tax will not, currently, be available.

If, for example, civil partners own property in Florida, the limited spousal exemption will not be available under the US/UK double tax treaty.

One wonders whether the United Kingdom Revenue will allow treaty protection for civil partners under the four pre 1975 Inheritance Tax Double Tax Treaties, with France, India, Italy and Pakistan, which override the deemed domicile rules. Currently, they are considering whether or not to give concessionary relief.

## **Private International Law and Civil Partnerships**

From an English perspective, Dicey and Morris on *The Conflicts of Laws* and Cheshire and North on *Private International Law* are silent on this issue and the chapters are yet to be written. Will the relevant connecting factors under English law for all registered partnerships and same sex marriages, be that of matrimonial or family domicile or only for valid overseas relationships or only for valid civil partnerships? If not, does the Rome Convention apply? If not, will there be a separate but similar connecting factor of 'civil partnership domicile' and must it follow exactly the same rules?

In other countries, the German and Belgian civil codes have considered and dealt with some of the private international law issues. To the extent that it

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<sup>51</sup> Schedule 1 CPA 2004.

<sup>52</sup> SI 2005 No 3229

<sup>53</sup> SI 2005 No 3230

may be considered a succession issue, then connecting factors of nationality and habitual residence will be at point.

### **Problem Examples**

- A same sex couple being a Dutch national and a UK citizen living in England and domiciled in England, marry in the Netherlands. They then move to the Netherlands and become habitually resident there. A will made before the marriage by the UK citizen will be revoked under English law but will be valid in the Netherlands, once habitually resident. A resulting Dutch matrimonial property regime will probably not be recognised in England.
- A mixed sex couple being a Dutch national and a UK citizen living in England and domiciled in England, marry in England. They then move to the Netherlands and become habitually resident there. After more than a year, they then convert their marriage into a registered partnership. Is such conversion not recognised in England and the marriage considered as continuing or is it recognised as a divorce and that they are therefore immediately regarded as unmarried?
- Two same sex Greek nationals living and domiciled in Greece, come to England and register a civil partnership. The civil partnership is not recognised by the law of their domicile, Greece. On death, will England still regard the civil partnership as valid, or only in relation to English immovables?
- An English domiciled and resident client has immovable property in England, France and South Africa. Now that Civil Partnerships are recognised he wishes to register his partnership with his partner who is a German national who resides in his French property. Where can they and where should they register their relationship? England, France or Germany or South Africa or in more than one and in which order?

### **Classification**

#### **England and Wales**

The United Kingdom Government view is that the definition of marriage remains unchanged by the introduction of civil partnership and that civil partnerships are only available to same sex couples. The Civil Partnership Act 2004 does not deal with any private international law issues and therefore it is currently uncertain as to whether section 216(1) CPA 2004 applies to a couple with a 'matrimonial domicile' or 'family domicile' in another jurisdiction.

If, therefore, a mixed sex couple domiciled outside England enter into a registered partnership in another jurisdiction, in which such partnership is valid and if valid under the law of their domicile (however that may be defined) would

the English courts rule that such a partnership is manifestly incompatible with public policy?

Why should it? If Dicey and Morris on *The Conflicts of Laws* supports the view that the prohibitions of English law applicable to marriage only apply to persons domiciled in England<sup>54</sup>, does not such view support the contention that the prohibitions of English law applicable to registered partnerships only apply to persons domiciled in England? Does section 216(6) mean that mixed sex registered partnerships in another part of the European Community, such as Belgium or the Netherlands may be valid, but not those registered somewhere else, such as New Zealand or Canada?

It is clearly discriminatory, if a relationship that would be recognised as a civil partnership if made between a same sex couple, is not recognised if made between a mixed sex couple.

It would seem that there a number of different possible approaches:-

1. To classify all such foreign relationships, made by non-domicilliarities, whether marriages or registered partnerships, and whether between mixed or same sex couples as 'marriages' and define the relevant connecting factor as being individual 'family domicile' for Will revocation purposes or the 'intended family domicile' for matrimonial property regime purposes. This seems unlikely, since it would discriminate between English domiciled and non-English domiciled persons.
2. To classify all such foreign relationships, which do not fit in to our current definitions of marriage or civil partnership as a separate category of relationship. Each one would need to be governed by its own rules and would mean that the courts might not have jurisdiction to dissolve or adjudicate. This seems unlikely.
3. To classify all relationships either as marriages – consensual unions between a man and a woman - or alternatively as civil partnerships – consensual unions between two men or between two women. The relevant connecting factor should be individual 'family domicile' for Will revocation purposes or the intended or dual 'family domicile' for matrimonial/civil partnership property regime purposes. Thus all qualifying mixed sex relationships must be marriages and all qualifying same sex relationships must be civil partnerships. What should qualify as a marriage? Should only quasi-marriages qualify or should any relationship, which if between a same sex couple qualifies as a civil partnership, qualify as a marriage if between a mixed sex couple? This would bring consistency and avoid discrimination. It would also enable the courts to have jurisdiction and find a solution if it is required to dissolve a foreign mixed sex relationship. It would solve issues relating to the Dutch 'Flash Divorce' and the conversion of a mixed sex

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<sup>54</sup> 13th Edition, Rule 68

marriage to a registered partnership, since this latter would then be a non-event for English law purposes.

Logically, it would be helpful to have an amendment to the Foreign Marriage Act 1892. This is unlikely to be politically acceptable. Is it necessary?

The problem it would not resolve is the French PACS and other semi-marriages. Many of us believe that these should not have been included in Schedule 20 to the CPA 2004 as specified relationships, qualifying as a civil partnership if between a same sex couple. Neither should it qualify as a marriage if between a mixed sex couple.

## **Generally**

Other jurisdictions, have precisely the same issues to deal with. The attached annex sets out a general table in relation to the issues of the connecting factors required for celebration locally and recognition of foreign relationships.

The uncertainties in England as to recognition of a mixed sex registered partnership, or the non-recognition of a Civil Partnership by persons domiciled in a jurisdiction which does not recognise it, are reflected in France as to the recognition of a same sex marriage or in Netherlands as to the non-recognition of a semi-marriage such as a PACS.

The issues involved with the effect of same sex marriages and registered partnerships on divorce, dissolution and death and development of private international law for such issues will continue to grow, but the legal position will remain fluid and constantly changing, and for this reason I have flagged those states where change is imminent or likely. Local up to date advice is even more vital in this area.

## **READER, I married him<sup>55</sup>.**

Life is more complicated than it was when Jane Eyre married Edward Rochester. The prospects for complete harmonisation seem to be poor at the moment. Even though Spain has joined the club, the divisions between north and south Europe appear to be unbridgeable for another generation<sup>56</sup>. Private international law will, however, need to catch up fast, in an aspect of human relationships still inextricably caught in the spotlight between Church and State, where the issues of politics, religion and sex meet - marriage as sacrament or contract, and its availability to all EU citizens without contravention of Article 14 of the European Convention. Like it or not, the ground is shifting.

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<sup>55</sup> Charlotte Bronte, *Jane Eyre*, the opening sentence of Chapter 38.

<sup>56</sup> See for example Cristina González Beilfuss *Parejas de hecho y matrimonios del mismo sexo en la Unión Europea* ISBN 84-97-68111-8 and Emanuele Caló *Le convivense registrate in Europa* ISBN 88-14-08144-1



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Kenneth McK. Norrie -

“Reproductive Technology, Transsexualism and Homosexuality: New Problems for International Private Law” - ICLQ vol 43, October 1994 PP 757-775

John Murphy -

“Rationality and Cultural Pluralism in the Non-recognition of Foreign Marriages” - ICLQ vol 49, July 2000 PP 643-659

Dr Kees Waaldijk -

“Taking Same-Sex Partnerships Seriously - European experiences as British perspectives?” 5th Stonewall Lecture 6th March 2002

Claudina Richards -

“The Legal Recognition of Same-sex Couples – The French Perspective” - ICLQ vol 51, April 2002 PP 305-324

Ian Sumner -

“Transformers - Marriages in Disguise?” - March [2003] IFL

Aude Fiorini

“New Belgium Law on Same Sex Marriage and its PIL Implications” - ICLQ vol 52, October 2003 PP 1039-1058

Nicholas Mostyn QC -

“Gay Marriage - The Dilemma for the Catholic Law Maker” - November [2003] IFL

Peter McEleavy -

“Communitarization of Divorce Rules: What Impact for English and Scottish Law?” - ICLQ vol 53, July 2004 PP 605-642

EU Commission Director General Justice and Home Affairs

Studies on Matrimonial Property Regimes and the Property of Unmarried Couples in PIL and Internal Law -

[http://europa.eu.int/comm/justice\\_home/doc\\_centre/civil/studies/doc/regimes/](http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc/regimes/)

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## Appendix

<b>Jurisdiction</b>	<b>Connecting Factor</b>	<b>Relationship</b>	<b>Celebration Requirements</b>	<b>Available for Mixed Sex?</b>	<b>Recognition of Foreign Relationships</b>
Australian Capital Territory (ACT)	Domicile of Choice	Civil Union		Yes	Hague Convention?
Andorra		Stable Union	One party habitually resident or national	Yes	Probably Marriage if valid under law of intended habitual residence?
Belgium	Habitual Residence	Marriage	One party habitually resident or national	Yes	Not semi-marriages?
		Registered Partnership		Yes	
Canada	Domicile	Marriage		Yes	Not semi-marriages?
		Registered Partnership		Yes	
Croatia	Habitual Residence	Registered Partnership	One party national (or of country which recognises Partnerships) and resident or both resident for 2 years	No	Only marriage and specified relationships?
Denmark					
Finland	5 years Habitual Residence or Nationality	Registered Partnership	One party national (or of country which recognises Partnerships) and resident or both resident for 2 years	No	Only marriage and specified relationships?
France	<i>Domicile</i> = Habitual Residence	PACS	One party habitually resident or national	Yes	Probably Marriage if valid under law of intended habitual residence
Germany	Nationality	Life		No	

Greenland	Habitual Residence	Partnership Registered Partnership		No	Only marriage and specified relationships?
Hungary Iceland		Registered Partnership	One party national (or of country which recognises Partnerships) and resident	No	Only marriage and specified relationships?
Israel	Habitual Residence				
Luxembourg	Habitual Residence	Registered Partnership	One party habitually resident or national	Yes	Hague Convention?
Netherlands	Nationality but Hague Conventions	Marriage	One party habitually resident or national	Yes	Not semi-marriages.
		Registered Partnership		Yes	Hague Convention?
New Zealand	Domicile of Choice	Conversion Civil Union		Yes Yes	
Norway	Habitual Residence	Registered Partnership	One party national (or of country which recognises Partnerships) and resident or one party resident for 2 years	No	Only marriage and specified relationships?
Slovenia		Registered Partnership		No	
South Africa		Marriage		Yes	
Spain	Nationality	Marriage	One party national or both resident	Yes	Not semi-marriages?
Sweden	Nationality but some issues of Habitual Residence	Registered Partnership		No	Only marriage and specified relationships?
Switzerland	Nationality	Registered Partnership		No	
Tasmania	Domicile of Choice	Significant Relationships	Both domiciled or ordinarily resident	Yes	Hague Convention?

					Not mixed sex Registered Partnerships?
United Kingdom	Domicile	Civil Partnership		No	
US - California	Domicile of Choice	Domestic Partnership	Common residence.	Yes, but if mixed sex one must be 63	
US - Connecticut	Domicile of Choice	Civil Union		No	
US -Hawaii	Domicile of Choice	Reciprocal Beneficiary		Yes	
US -Maine	Domicile of Choice	Domestic Partnership		Yes	
US - Massachusetts	Domicile of Choice	Marriage		Yes	
US -New Jersey	Domicile of Choice	Domestic Partnership	Common residence in NJ. If elsewhere one party must be member of NJ retirement scheme.	Yes, but if mixed sex one must be 63	
US - Vermont	Domicile of Choice	Civil Union		No	