

Whither “Palimony”? *Marvin v. Marvin* Fifty Years Later

by

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The term “palimony” seems to have been coined by the late Marvin Michelson. Michelson, a California attorney remembered as the “divorce lawyer to the Hollywood stars” and as a master of the press-conference and the sound-bite, built a substantial reputation on his celebrity clientele, that invented term, and the case with the homophonous name, *Marvin v. Marvin*,¹ that gave rise to it, a case which, paradoxically enough, he and his client mostly lost.

We first review the somewhat colorful history of the California cases which gave rise to the term and the concept, its development in California, the varied responses of the courts and legislatures of the other states, and the effort to formulate an acceptable uniform law governing the rights of unmarried cohabitants.

I. *Marvin v. Marvin* and the Early Palimony Cases

Historical context for *Marvin* (including the California Supreme Court’s references to “meretricious” relationships) may start in 1965 with *Griswold v. Connecticut*,² which marked the starting point of the U.S. Supreme Court’s doctrine of a right of personal privacy, at least between married persons. In 1970, California became the first state in the United States to adopt no-fault divorce³; in 1975, the state removed most criminal penalties for *private* sexual conduct between consenting adults, including removing the (admittedly rarely enforced) criminal penalties for

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¹ *Marvin v. Marvin* (“Marvin I”), 557 P.2d 106 (Cal. 1976).

² *Griswold v. Connecticut*, 381 U.S. 479 (1965).

³ A revised version of Senate Bill 252 as Chapter 1608 of the Statutes of 1969, with Assembly Bill 530 was enacted in amended form as Chapter 1609, intended as a “trailer measure” to clean up loose ends by amending Chapter 1608.

adultery and “adulterous cohabitation.”⁴ Popular culture, in the seemingly Edenic post-Pill and pre-AIDS moment, was in the process of reevaluating how people arranged their sexual and romantic lives.

Actress Michelle Triola Marvin,⁵ who had cohabited with actor Lee Marvin for five years, made two claims in *Marvin*, based upon an alleged express oral contract: one for division of property and earnings acquired during the relationship, and the other for ongoing support. Lee obtained a judgment on the pleadings. Michelle moved to set aside that judgment to permit her to amend and allege an implied agreement; the trial court denied that motion. The California Supreme Court reversed the judgment and that order.

The Supreme Court held that the mere fact that parties were cohabiting did not render invalid and unenforceable any contracts between them, as long as their sexual relationship was not part of the consideration for the contract.⁶ The court further held that the fact that the parties were cohabiting did not preclude the validity and enforceability of contracts implied in fact, and (in footnoted dicta) that it did not preclude claims in equity arising from the relationship.⁷ The court took some pains to point out⁸ that it was not, in essence, reviving common law marriage, which, by statute, could not be contracted in the state of California after 1895.⁹

Justice Clark, concurring with the result, but dissenting from the majority’s opinion, opined that the court should have simply reversed the trial court’s finding that, as a matter of law, any alleged “contract,” written or oral, express or implied, between Lee and Michele was invalid and unenforceable because Lee remained married well after his relationship with Michele started,

⁴ Mary Lee Tayrein, Recent Developments, *California Consenting Adults Law: The Sex Act in Perspective*, 13 SAN DIEGO L. REV. 439, 441 (1976).

⁵ For clarity and brevity, we refer to the parties by their first names. If it’s good enough for the California Supreme Court, it’s good enough for us.

⁶ *Marvin I*, 557 P.2d at 116.

⁷ *Id.* at 126.

⁸ *Id.* at 117 n.11, 122 n.24.

⁹ *Norman v. Thomson*, 54 P. 143, 144 (Cal. 1898); *Estate of Abate*, 333 P.2d 200 (Cal. Ct. App. 1958).

and that any such agreement was premised on “meretricious” consideration.¹⁰

When the matter was reheard in the trial court, without a jury, the judge awarded Michele \$104,000 for “rehabilitation”:

[T]he trial court concluded as a matter of law that inasmuch as defendant had terminated the relationship of the parties and plaintiff had no visible means of support, “in equity,” she had a right to assistance by defendant until she could become self-supporting. The trial court explained that it fixed the award at the highest salary that [Michele] . . . had ever earned, namely, \$1,000 a week for two years, although [her] salary had been at that level for only two weeks and she ordinarily had earned less than one-half that amount weekly.¹¹

Lee again appealed, and the California Court of Appeal reversed that award (“*Marvin II*”), noting that the trial court’s making of the award seemed premised on two other footnotes in the *Marvin I* opinion:

There is no doubt that footnote 26 opens the door to a support award in appropriate circumstances. Likewise, under footnote 25, equitable remedies should be devised “to protect the expectations of the parties to a nonmarital relationship.” The difficulty in applying either of these footnotes in the manner in which the trial court has done in this case is that, as already pointed out, the challenged limited rehabilitative award of the trial court is not within the issues of the case as framed by the pleadings and there is nothing in the trial court’s findings to suggest that such an award is warranted to protect the expectations of both parties.¹²

So, ultimately, the court of appeal ruled that there should have been no division of property or earnings, and no “alimony-like” support.

The same year as *Marvin II*, in *Jones v. Daly*, the California court took another look at the issue¹³ in the context of a probate case, with the added fillip that the parties had been *same-sex* cohabitants.¹⁴ In denying relief to the surviving partner, the California

¹⁰ *Marvin I*, 557 P.2d at 122 (Clark, J., concurring in part and dissenting in part).

¹¹ *Marvin v. Marvin* (“*Marvin II*”), 122 Cal. App. 3d 871, 875 (Cal. Ct. App. 1981).

¹² *Marvin II*, 122 Cal. App. 3d at 877.

¹³ *Jones v. Daly*, 122 Cal. App. 3d 500 (Cal. Ct. App. 1981).

¹⁴ This was five years before *Bowers v. Hardwick*, 478 U.S. 186 (1986), and twenty-two years before *Lawrence v. Texas*, 539 U.S. 558 (2003).

Court of Appeal, citing *Marvin I*, returned to the “meretricious consideration” standard, noting

[i]n determining whether the “cohabitators agreement” rests upon illicit meretricious consideration, we are guided by the following principles: “[A] contract between nonmarital partners, even if expressly made in contemplation of a common living arrangement, is invalid only if sexual acts form an inseparable part of the consideration for the agreement. In sum, a court will not enforce a contract for the pooling of property and earnings if it is explicitly and inseparably based upon services as a paramour.”

The complaint herein alleges: Following their initial meeting, plaintiff and Daly “dated, engaged in sexual activities and, in general, acted towards one another as two people do who have discovered a love, one for the other”; . . . the same time they entered into the “cohabitators agreement” whereby they agreed that during the time “they lived and cohabited together” they would hold themselves out to the public at large as “cohabiting mates” and plaintiff would render his services to Daly as “a lover, companion, homemaker, traveling companion, housekeeper and cook” . . . ; in order that plaintiff would be able to devote his time to Daly’s benefit “as his lover, companion, homemaker, traveling companion, housekeeper and cook,” he would abandon his career; plaintiff and Daly “cohabited and lived together” and pursuant to and in reliance on the “cohabitators agreement,” plaintiff allowed himself to be known to the general public as the “lover and cohabitation mate” of Daly. These allegations clearly show that plaintiff’s rendition of sexual services to Daly was an inseparable part of the consideration for the “cohabitators agreement,” and indeed was the predominant consideration.¹⁵

. . . and that, for the time being, was the end of that.

Winds of change continued to blow.

Seven years later, in *Whorton v. Dillingham*,¹⁶ the plaintiff sued his same-sex cohabitant based on contract, and the court of appeals reversed the trial court’s sustaining of a demurrer, stating that, notwithstanding that a term of the parties’ oral agreement, as pled, involved sexual services, if there were other substantial terms of the contract with which there had been compliance, the portion involving sexual services did not nullify the rest of the contract. The “meretricious relationship” argument apparently was losing its strength.

¹⁵ *Jones*, 122 Cal. App. 3d at 508.

¹⁶ 202 Cal. App. 3d 447 (Cal. Ct. App. 1988).

In *Taylor v. Pollackwich*,¹⁷ Janina brought an action against Joseph, with whom she had been living in a nonmarital relationship for seven years for one-half interest in property that they acquired while living together. The trial court granted her an exclusive right to reside with her children in the home purchased while the parties had been living together (provided she pay rent), granted Joseph the right to sell or refinance the house subject to Janina's right to live there, awarded her furniture, furnishings, and appliances, and ordered Joseph to pay \$1,000 as her moving costs upon her vacating the house. Both parties appealed. The California Court of Appeal held, first, that this "rehabilitative award," without any underlying legal or equitable obligation on Joseph's part to provide Janina and her children with a place to live or to furnish them with support in any form, was improper, and second, that the findings supported the judgment insofar as it failed to impress a constructive trust on the house in her favor. To the extent that there was no agreement, express or implied, her claims failed.

In *Bergen v. Wood*,¹⁸ the parties never cohabited; Bergen maintained her apartment in Germany. While Bergen was in California she kept a room at a hotel in Beverly Hills. Bergen was Wood's travelling companion and accompanied him to social events. Wood provided Bergen with money and paid for travel expenses and hotel accommodations. The relationship ended after seven years in late 1988, after Bergen retained (surprise!) Marvin Mitchelson to represent her concerning various property and contractual claims arising from the relationship. In 1989, Bergen filed a complaint against Wood for breach of express contract, breach of implied contract and fraud and deceit.

Bergen alleged that the parties entered into an oral agreement in which she agreed to be Wood's "companion, his confidante, homemaker, and [to] assist [Wood] with his business affairs by acting as a social hostess."¹⁹ In return, Wood would provide for her financial support in accordance with her needs and his ability to pay. The trial court found that, severing the sexual aspects of the relationship, Bergen's services as a social companion and hostess were adequate consideration for the support promises. The California Court of Appeal, however, found that, in addition to rendering

¹⁷ 145 Cal. App. 3d 1014 (Cal. Ct. App. 1983).

¹⁸ 14 Cal. App. 4th 854 (Cal. Ct. App. 1993).

¹⁹ *Id.* at 857.

sexual services, Bergen acted as Wood's "social companion" and "hostess." Because services as a social companion and hostess are not normally compensated and are inextricably intertwined with the sexual relationship, Bergen failed to show any consideration independent of the sexual aspect of the relationship.²⁰ Therefore, the agreement was unenforceable for lack of consideration.

Later that same year, in *Friedman and Friedman*,²¹ a different panel of the California Court of Appeal reviewed the trial court's award of temporary support to petitioner Terri, where the trial court found that there was no other adequate remedy at law.²² The parties had been together twenty-one years, raised children together, moved several times, buying property; Elliot had gone to law school and had become a successful attorney. The parties had planned a wedding about ten years prior to the end of their relationship, which Elliot could not get to because of a storm. At the time of trial Terri was disabled with a back injury. In reversing the trial court's support award, the court of appeal found that there was no law permitting temporary palimony as an equitable remedy, that the terms of any implied contract were not clear at the time of the pendente lite orders, or that such terms included support, and that payment of support is not an "injunctive remedy."²³

II. Palimony Outside of California After *Marvin*

The popular perception of the significance of *Marvin* then rolled across the country. Within a few years after the California Supreme Court's decision in *Marvin*, other states confronted the issue of the rights of nonmarried cohabitants or partners, mostly without specifically addressing the "palimony"/support issue directly. In some states, reviewing courts determined that contracts between adults regarding their personal lives and finances were not *per se* unenforceable just because they are in a romantic or cohabiting relationship, so long as sexual services are not the primary or sole consideration for the contract. Others dismissed *Marvin* claims as disguised claims for common-law marriage.

²⁰ *Id.* at 859.

²¹ 20 Cal. App. 4th 876 (Cal. Ct. App. 1993).

²² *Id.* at 881.

²³ *Id.* at 889, 890.

In 1979, in *Hewitt v. Hewitt*,²⁴ the Illinois Supreme Court reversed its court of appeal, and explicitly rejected a judgment on an alleged oral contract based on the allegations that:

[D]efendant thereafter told her that they were husband and wife and would live as such, no formal ceremony being necessary, and that he would “share his life, his future, his earnings and his property” with her; that the parties immediately announced to their respective parents that they were married and thereafter held themselves out as husband and wife; that in reliance on defendant’s promises she devoted her efforts to his professional education and his establishment in the practice of pedodontia, obtaining financial assistance from her parents for this purpose; that she assisted defendant in his career with her own special skills and although she was given payroll checks for these services she placed them in a common fund; that defendant, who was without funds at the time of the marriage, as a result of her efforts now earns over \$80,000 a year and has accumulated large amounts of property, owned either jointly with her or separately; that she has given him every assistance a wife and mother could give, including social activities designed to enhance his social and professional reputation.²⁵

The Illinois court noted, and criticized the *Marvin* rationale extensively, noting, ultimately, “In our judgment the fault in the appellate court holding in this case is that its practical effect is the reinstatement of common law marriage.”²⁶

The Wisconsin Supreme Court, in *Watts v. Watts*,²⁷ criticized the Illinois court’s reasoning in *Hewitt*.²⁸ Although it upheld the dismissal of the plaintiff’s claims explicitly based on the Wisconsin Family Law Act and on “marriage by estoppel,” the court reversed the dismissal of her claims grounded in contract, unjust enrichment, and partition.²⁹

Some state legislatures passed what amounted to “anti-palimony/anti-Marvin” laws, limiting or barring the allegation of rights based on implied or oral contracts between cohabitators. In 1987 Texas amended its Statute of Frauds to include that, among the types of agreements required to be in writing and signed by

²⁴ 394 N.E.2d 1204 (Ill. 1979).

²⁵ *Id.* at 1205.

²⁶ *Id.* at 1211.

²⁷ *Watts v. Watts*, 405 N.W.2d 303 (Wis. 1987).

²⁸ *Id.* at 310.

²⁹ *Id.* at 316.

the person to be charged, was “an agreement made in consideration of marriage or on *consideration of nonmarital conjugal cohabitation*.”³⁰

In *Zaremba v. Cliburn*,³¹ the Texas Court of Appeals affirmed the trial court’s dismissal of the cohabitation claims, because the (same-sex) parties had not memorialized their relationship in writing after the Texas Statute of Frauds had been amended to require such agreements to be in writing (and, in passing, coined the adjective “palimomial”).

Zaremba alleged that his relationship with Cliburn, commenced in the 1970s and,

... continued until 1994, seven years after the Legislature amended the statute of frauds. If Cliburn and Zaremba had intended this purported agreement to be enforced, they had seven years after the amendment of the statute of frauds to memorialize it in writing. In light of the Legislature’s plain intent to “kill [] palimony,” we conclude that section 26.01(b)(3) bars all unwritten palimomial agreements concerning relationships that continued past the amendment’s effective date.³²

In the 1978 case of *Kozłowski v. Kozłowski*,³³ Irma brought an action against Thaddeus, with whom she had cohabited for fifteen years, to recover a share of assets he accumulated during those years, the reasonable value of services rendered for his benefit during that time, and future support. The New Jersey Superior Court, Chancery Division, held that: first, her claim for compensation for services rendered was satisfied by the value of weekly support, clothing, trips, vacations, medical benefits and jewelry which Thaddeus had provided for her, and second, his oral promise to take care of her for rest of her life did not violate the (then-existing) writing requirement or time requirement of Statute of Frauds and was enforceable. The court posed the question this way:

The dilemma may be simply stated: Is there any remedy available under our law for a woman who has devoted 15 or more years living with a man, for whom she provided the necessary household services and emotional support to permit him to successfully pursue his business career and for whom she has performed housekeeping, cleaning and shopping services, run the household, raised the children, her own as well as his, all

30 TEX. BUS. & COM. CODE ANN. § 26.01(b)(3) (emphasis added).

31 949 S.W.2d 822 (Tex. App. 1997).

32 *Id.* at 827.

33 395 A.2d 913 (N.J. Super. Ct. Ch. Div. 1978).

without benefit of marriage; a woman who was literally forced out of the household with no ongoing support or wherewithal for her survival?³⁴

The court concluded that,

Our case law supports the equitable principle that unjust enrichment of one party at the expense of the other will not be tolerated. The acceptance of valuable services performed under circumstances justifying the conclusion that it would be inequitable to allow the recipient to enjoy the benefit without compensation therefore supports relief by way of quantum meruit, quasi -contract, constructive trust or implied contract, as may be appropriate if no express contract exists. Our rules permit the employment within the pleadings of any or in the alternative, all of these theories of relief.³⁵

However, the court concluded that any obligation the man had for support under any of these theories was satisfied by payments that had been made.

In *Crowe v. De Gioia*,³⁶ Rose brought a suit to enforce the alleged agreement between her and her unmarried cohabitant Sergio. The New Jersey Superior Court, Chancery Division, Middlesex County, entered an order awarding interim support and other relief to Rose; Sergio appealed. The Superior Court, Appellate Division, vacated.³⁷ After granting leave to appeal, the Supreme Court reversed and remanded.³⁸ After remand, the Superior Court awarded monetary damages to Rose and ordered Sergio to transfer title to the residence to her. On appeal, the Superior Court, Appellate Division, held that: (1) sexual services were not “explicitly and inseparably” a basis of the agreement, so as to bar relief; (2) evidence supported the finding of cohabitation; (3) Sergio would not be allowed to use the Statute of Frauds as a bar to relief to which Rose was entitled as result of her full performance of their agreement; (4) the trial judge’s methodology in calculating the lump-sum figure to be awarded Rose was not grounds for reversal; (5) Rose was not entitled to equitable distribution of Sergio’s property; and (6) Rose was not entitled to attorney fees.

³⁴ *Id.* at 916-17.

³⁵ *Id.* at 917.

³⁶ 495 A.2d 889 (N.J. Super. Ct. 1985).

³⁷ *Crowe v. DeGioia*, 430 A.2d 251 (N.J. Super Ct. Ch. Div. 1981).

³⁸ *Crowe v. De Gioia*, 447 A.2d 173 (N.J. 1982).

The court did allow the interim order made by the trial court to continue pending its review, to maintain the status quo.³⁹

In *In re Estate of Roccamonte*,⁴⁰ the appellate court previously found that the trial court erred in granting summary judgment in favor of the decedent's estate against a woman seeking palimony against the decedent. After the appellate division of the court dismissed the woman's case, the appellate court reversed with instructions to grant judgment in favor of the woman and to determine to what she was entitled, based on the existing record. The New Jersey Court of Appeal found that the trial court erred by finding that palimony could only be based on an express contract when, at that time, it could also have been based on an implied contract, which, based on the trial court's statements, it found.

In *Devaney v. L'Esperance*, Helen brought a palimony suit against Francis, based on promises she alleged he had made to her during the course of their twenty-year romantic relationship.⁴¹ The New Jersey Superior Court, Chancery Division, Family Part, entered judgment in Francis' favor and dismissed the complaint. Helen appealed and the Superior Court, Appellate Division, affirmed. Helen appealed again.

In determining that cohabitation was not an indispensable element for a cause of action for palimony, the Supreme Court stated,

In this appeal, we determine whether cohabitation is an indispensable element of a cause of action for palimony. Plaintiff and defendant were involved in an intimate relationship. During the course of their twenty-year relationship, defendant, who was married, continued to live with his wife and never cohabited with plaintiff. However, he promised to divorce his wife, marry plaintiff, and have a child with her. Defendant's promises were not fulfilled and his relationship with plaintiff eventually ended. Plaintiff filed a palimony complaint against defendant, asserting a breach of a promise to support her for life. The trial court denied relief because the parties essentially had a dating relationship rather than a marital-type relationship that was needed to support a palimony claim. The Appellate Division affirmed solely because the parties never cohabited. We granted certification to address whether a party may prove a cause of action for palimony absent cohabitation.⁴²

³⁹ Crowe v. DeGioia, 495 A.2d 889 (N.J. Super. Ct. 1985).

⁴⁰ 787 A.2d 198 (N.J. Super. Ct. App. Div. 2001).

⁴¹ 918 A.2d 684 (N.J. Super. Ct. 2007).

⁴² Devaney v. L'Esperance, 949 A.2d 743, 743 (2008).

In *Bayne v. Johnson*,⁴³ a factually complex case, the appellate court reversed that portion of the trial court’s award of a lump sum for “palimony” based on the need and ability test often used in alimony cases. The New Jersey Court of Appeal noted,

In contrast to the plaintiffs in *Kozlowski*, *Roccamonte*, and *Crowe*, nothing in the record indicates that with her income of approximately \$60,000 a year, Fiona is unable “to provide for herself a reasonable degree of economic comfort appropriate in the circumstances.” . . . Palimony is the enforcement of a broken promise made for future support. . . . [Palimony] is not recompense for years spent in a failed relationship. Fiona may speculate as to what could have been had she not met Earl or left him earlier, but palimony is not an economic substitute for opportunities that may have been lost or expectations that were unfulfilled.⁴⁴

III. New Jersey Changes Direction, a Bit

In 2010, the New Jersey Legislature passed another “anti-palimony” law, by amending the New Jersey Statute of Frauds, to add New Jersey Statute Annotated § 25:1-5(h). Prior to the amendment, New Jersey’s common law recognized that an unwed couple could enter into a palimony agreement and courts enforced oral palimony agreements involving “marital-type relationships” where one party induced the other to enter or remain in the relationship by a promise of support.⁴⁵ The section added by the amendment required an attorney-reviewed writing for parties to make an enforceable

promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.⁴⁶

In *Moynihan v. Lynch*,⁴⁷ however, a former domestic partner brought a palimony action seeking enforcement of a written palimony agreement, prior to the 2010 amendment, that was not reviewed by counsel before the parties signed it. The Superior Court, Chancery Division entered an order enforcing the agreement.

⁴³ 957 A.2d 707 (N.J. Super. Ct. App. Div. 2008).

⁴⁴ *Id.* at 718.

⁴⁵ *Moynihan v. Lynch*, 269 A.3d 435, 447 (N.J. 2022).

⁴⁶ N.J. STAT. ANN. 25:1-5 h (effective Jan. 18, 2010).

⁴⁷ *Moynihan*, 269 A.3d 435.

Both partners appealed. The Superior Court, Appellate Division, affirmed in part, reversed and vacated in part, and remanded.⁴⁸ One partner petitioned for certification, which was granted. The New Jersey Supreme Court, in part reversing the Appellate Division, held

that the palimony agreement, as written and signed, without the requirement of attorney review, is enforceable. That portion of N.J.S.A. 25:1-5(h), which imposes an attorney-review requirement to enforce a palimony agreement, contravenes Article I, Paragraph 1 of the New Jersey Constitution. In affirming the Appellate Division, we uphold the trial court's finding that an oral palimony agreement did not exist before 2010.⁴⁹

New Jersey courts found it necessary to continue to discern the legislature's intent. In *Maeker v. Ross*,⁵⁰ a woman who shared a marital-like relationship with a man brought an action against the man after the relationship dissolved, seeking enforcement of an alleged oral palimony agreement. The trial court denied the man's motion to dismiss the complaint and awarded the woman pendente lite support and attorney fees. On his appeal, the New Jersey Superior Court, Appellate Division, reversed and remanded for entry to dismiss the woman's complaint with prejudice.⁵¹ The woman filed a petition for certification, which the Supreme Court granted.

The Supreme Court found,

In *Kozlowski v. Kozlowski*, this Court for the first time recognized the enforceability of a palimony agreement against a person who promised to provide future support to a partner with whom he shared a marital-type relationship. . . . A palimony agreement is a contract, and as we explained, palimony agreements are usually oral because "parties entering this type of relationship usually do not record their understanding in specific legalese." " *In re Estate of Roccamonte*, 174 N.J. 381, 389, 808 A.2d 838 (2002). . . . Accordingly, since 1979, the public has had a right to rely on our jurisprudence that oral palimony agreements would be enforced . . . [] C. Kozlowski and its progeny were the law until January 18, 2010. An indeterminable number of unmarried couples may have entered palimony agreements before that date, having the right to rely on the law that recognized their personal contracts.

⁴⁸ *Moynihan v. Lynch*, No. A-4883-18T3 (N.J. Super. Ct. App. Div. Nov. 12, 2020).

⁴⁹ *Moynihan*, 269 A.3d 435.

⁵⁰ 99 A.3d 795 (N.J. 2014).

⁵¹ *Maeker v. Ross*, 62 A.3d 310 (N.J. Super. Ct. App. Div. 2013).

Whether the Legislature intended to render nugatory those oral palimony agreements formed before January 18, 2010, in large part, depends on the meaning of the words: “This act shall take effect immediately.” L. 2009, c. 311, § 2. We must determine whether those words mean that only newly formed palimony agreements will have to comply with the Amendment or that all palimony agreements, whenever formed, must be in writing and the parties to the agreement counseled by attorneys.⁵²

Contrary to the to the Texas court’s holding in *Zaremba*, the New Jersey court found that the legislature, having not expressed any intention that the revised Statute of Frauds (requiring such agreements to be in writing), be retroactive as to agreements made prior to the amendments to the statute, but not made in writing, no such requirement could be enforced against pre-amendment agreements.

In *Freedman v. Muller*,⁵³ Carmella, a hairdresser, brought an action against Michael, her former cohabitant, who was legally separated from his wife but not divorced, for support, and property, seeking half of Michael’s earnings, as well as a constructive trust, unjust enrichment, quantum meruit, implied contract, and promissory estoppel, based on their alleged marriage-like relationship for more than a decade and various promises Michael allegedly made to her. The Illinois Circuit Court granted Michael’s motion to dismiss the palimony claim (which the court repeatedly referenced as such) and denied his motion to dismiss other claims. Carmella appealed.

The court identified a number of cases in which contractual and equitable remedies had been provided:

Out-of-state jurisdictions, heavily relied upon by Freedman, also do not allow for a palimony claim as framed in her complaint. Freedman’s cited cases involve equitable grounds or a promise or agreement, whether express or implied, concerning the property at issue. In *Marvin v. Marvin*, . . . the court found that “adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights” and noted that the plaintiff had alleged that the parties “agreed to pool their earnings, * * * contracted to share equally in all property acquired, and that (the) defendant agreed to support plaintiff.” In *Glasgo v. Glasgo*, . . . the court stated that recovery for unmarried people “would be based only upon legally viable contractual and/or equitable grounds

⁵² *Maeker*, 99 A.3d at 797, 802.

⁵³ 35 N.E. 3d 1235 (Ill. App. Ct. 2015).

which the parties could establish according to their own particular circumstances,” and noted that the plaintiff “invoked both contractual and equitable grounds” for relief.”⁵⁴

The court found, however, that

[o]verall, Freedman fails to point to any connection between her factual allegations and her requested remedy of one-half of Muller’s income, other than their relationship itself. Because an agreement or promise or an equitable claim is necessary for Freedman to enforce a property right against Muller, and her palimony claim does not include those elements, her palimony claim failed to allege facts sufficient to bring her claim within a legally recognized cause of action, and was properly dismissed.⁵⁵

IV. The Uniform Law Commission on the Rights of Unmarried Cohabitants

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws) is “intended to provide states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”⁵⁶ When a Uniform Law is developed and approved by the Board, legislators from the various states may elect to introduce it in their own state legislatures.

The work of the ULC is done by committees appointed by the Commissioners. One such committee, The Economic Rights of Unmarried Cohabitants Act Drafting Committee, was convened in March 2019. Over the next two and a half years that committee developed the Uniform Cohabitants Economic Remedies Act (UCERA).⁵⁷ UCERA was developed in response to

the [dramatic] increase in the number of nonmarital cohabitants in the United States over the past half-century. The Census first began including “Unmarried Partner” as a possible relationship in 1990. [Today], more than 17 million people, representing seven percent of American adults, [are] cohabiting. More adults have cohabited than have been married. The number of older adults who cohabit is also growing. In

⁵⁴ *Id.* at 1243.

⁵⁵ *Id.* at 1244.

⁵⁶ UNIF. COHABITANTS ECON. REMEDIES ACT prefatory note at 1 (UNIF. L. COMM’N 2022).

⁵⁷ *Id.*

1996, only two percent of partners in cohabiting households were ages 65 or older; by 2017, that number had tripled to six percent. Just over six percent of partners in cohabiting households earn over \$90,000 per year, while more than half earn less than \$30,000.⁵⁸

In its prefatory notes, noting the lack of predictability from state to state or even within a single state, the authors affirm that UCERA

is an enabling act that [does not create any special status for cohabitants; it] enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances. . . . [The act affirms] the capacity of each cohabitant to contract with the other and to claim a contract-based or equitable remedy against the other [with respect to “contributions to the relationship”] without regard to any intimate relationship that exists between [them] and without subjecting them to hurdles that would not be imposed on litigants of similar claims. [The act ensures that the nature of the relationship of the parties is not a bar to capacity to contract. At the same time, the act recognizes the value of non-sexual services, activities, and efforts of a party to the relationship as a basis for contractual and equitable claims.]⁵⁹

The UCERA resolves conflicts between the then-existing laws of various jurisdictions as follows:

(a) A cohabitants’ agreement may be oral, written, or in a record, express or implied-in fact. (b) Contributions to the relationship are sufficient consideration for a cohabitants’ agreement. (c) A claim for breach of a cohabitants’ agreement accrues on breach and may be commenced, subject to [cite to the applicable statute of limitations], during cohabitation or after termination of cohabitation. (d) A term in a cohabitants’ agreement that affects adversely a child’s right to support is unenforceable. € A term in a cohabitants’ agreement that limits the ability of the cohabitant, or requires a cohabitant, to pursue a civil, criminal, or administrative remedy is voidable to the extent the remedy is available because the cohabitant is a victim of a [crime of violence].⁶⁰

UCERA also preserves the *equitable* rights of cohabitants, provided such equitable rights are not “inconsistent with a valid

⁵⁸ *Id.* at 1. *See also*, Benjamin Gurrentz, “Cohabiting Partners Older, More Racially Diverse, More Educated, Higher Earners” (2019), <https://www.census.gov/library/stories/2019/09/unmarried-partners-more-diverse-than-20-years-ago.html>).

⁵⁹ UNIF. COHABITANTS ECON. REMEDIES ACT, UNIF. L. COMM’N prefatory note (2022).

⁶⁰ *Id.* at 13-14.

provision of a cohabitants' agreement"⁶¹ and provides factors for a court to consider in determining whether it is appropriate to grant such equitable relief.

At present only the states of New Mexico⁶² and Illinois⁶³ have introduced UCERA for consideration.

V. Rights of Unmarried Cohabitants Outside the United States

The rights of unmarried cohabitants vary tremendously outside the United States. Within the European Union, some countries recognize some rights and obligations of unmarried cohabitants; some do not. If an EU citizen relocates from one EU country to another, there may be an agreement between the countries that the relationship recognized in the originating country will also be recognized in the receiving country; what one must do to prove the existence of the cohabitation relationship, or the terms of any such cohabitation agreement, may differ from country to country.⁶⁴

In various majority Muslim countries, cohabitation is forbidden as *Zina*, sexual relations outside of marriage. The penalty can range from fines to flogging to stoning to death.⁶⁵ Whether one develops rights and obligations as a couple outside of marriage is very much jurisdiction dependent outside the United States.

Conclusion

While *Marvin* ostensibly opened the door to a new era of interpersonal non-marital romantic relationships with financial rights and obligations, the subsequent half century saw courts and legislatures fine-tuning and sometimes scaling back those rights

⁶¹ *Id.* at 16.

⁶² H.B. 165, 57th Leg., 1st Sess. (N.M. 2025).

⁶³ H.B. 4404 103rd General Assembly (2024).

⁶⁴ *Unmarried Couples*, YOUR EUROPE, https://europa.eu/youreurope/citizens/family/couple/de-facto-unions/index_en.htm#inline-nav-2 (last visited Oct. 26, 2025).

⁶⁵ See, e.g., Pakistan: The Offence of *Zina* (Enforcement of Hudood) Ordinance, 1979. Ordinance No. VII of 1979; Qatar: Law No. 11: Chapter 4, Adultery and Crimes of Honor, art. 279-289.

and obligations. Changing mores of society and political perception has resulted in an ebb and flow of granting and retracting those rights. The next fifty years may indicate whether something akin to alimony will be permitted, encouraged, discouraged, or prohibited for unmarried partners.