

## MEMORANDUM

TO: ERUC Drafting Committee  
FROM: Mary Devine and Craig Stowers, Co-Chairs; Naomi Cahn, Reporter  
RE: Options for a Uniform Act  
DATE: Feb. 25, 2019

This memo sets out various options to include in a Uniform Act on the Economic Rights of Unmarried Cohabitants. It focuses on four methods for “unmarried cohabitants” to establish various types of “economic rights.” Regardless of the option (or options) they prefer, Committee members should consider how to define these key terms of “unmarried cohabitants and “economic rights” in advance of the meeting.

Note that the Committee is considering rights that might accrue during a relationship as well as rights that accrue when the relationship ends via separation or death. *The options set out below are designed to summarize general principles. Once the Committee decides which option[s] to choose, the next step in advance of our fall Committee meeting, is to develop a draft Act.* The Jan. 16, 2019 memo to the ERUC Drafting Committee sets out additional issues to consider, including the definition of economic rights and the types of relationships covered.

1. **CONTRACT:** Couples would know that any contracts for a legal purpose between them will be enforceable.
  - a. **Who:** any nonmarital cohabitants.
  - b. **Elements:** Establishment of a contract
    - i. Written
    - ii. Oral
    - iii. Implied-in-fact, such as through facts and circumstances designed to show mutual agreement
  - c. **What:** the rights established pursuant to the contract
  - d. **Potential language** (courtesy of Harry Tindall):
    - i. *The draft of the act should declare that contracts between unmarried cohabitants are not against public policy and are not void as arising out of a meretricious relationship. This is intended to clearly repeal any common law notions that such contracts are void.*
    - ii. *The draft might provide that unmarried cohabitants are permitted to enter into a nonmarital agreement to the same extent as persons are permitted to enter into any other type of agreement. This is intended to place these agreements on equal footing and not create any inconsistency.<sup>1</sup>*
  - e. **Benefits and drawbacks**
    - i. **Pro:**

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<sup>1</sup> Harry Tindall’s proposal, email of 1/19/19 (with minor modification).

1. Many state courts have already moved in this direction, so this would provide legislative guidance in accord with the common law of those states.
  2. This provides certainty to nonmarital couples, clarifying that contracts relating to cohabitation are not contrary to public policy.
- ii. **Con:**
1. proving the existence of a contract is fact-intensive
  2. not all couples will have entered into contracts, so this might not provide a remedy for dependencies created through relationships.
2. **OPT-IN:** Couples could choose a state-established arrangement that accords rights.
- a. Alberta Adult Interdependent Partner Agreement<sup>2</sup>
    - i. **Who:** any 2 persons who are living together or intend to live together in a relationship of interdependence unless they are related by blood or adoption
    - ii. **Elements:** Signing the requisite Adult Interdependent Partner Agreement.<sup>3</sup>
    - iii. **What:** Those who enter into such an agreement have rights and responsibilities that are substantially similar to those who are married.<sup>4</sup>
  - b. Domestic partnerships and civil unions as well Hawaii Reciprocal Beneficiaries,<sup>5</sup> or Colorado Designated Beneficiaries<sup>6</sup> provide additional possible models. Note that designated beneficiaries can select from a variety of potential rights and obligations, and the selection does not need to be reciprocal, so each party can select different rights.<sup>7</sup>

<sup>2</sup> Adult Interdependent Relationships Act, S.A. 2002, c A-4.5 (Can.), [http://www.qp.alberta.ca/1266.cfm?page=A04P5.cfm&leg\\_type=Acts&isbncln=9780779780334](http://www.qp.alberta.ca/1266.cfm?page=A04P5.cfm&leg_type=Acts&isbncln=9780779780334). The 2018 Family Statutes Amendment Act makes numerous references to the Interdependent Relationships Act and substantially affects the rights of those who qualify as Adult Interdependent Partners. Family Statutes Amendment Act, S.A. 2018, c 18 (Can.), [https://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_29/session\\_4/20180308\\_bill-028.pdf/](https://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_29/session_4/20180308_bill-028.pdf/), [https://www.assembly.ab.ca/net/index.aspx?p=bills\\_status&selectbill=028&legl=29&session=4](https://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=028&legl=29&session=4). Not all of the summaries of the status of interdependent partners in Alberta include these recent changes.

<sup>3</sup> The required form for the agreement is reprinted in Appendix A. Adult Interdependent Partner Agreement Regulation, Alta. Reg. 66/2011 (Can.), [http://www.qp.alberta.ca/1266.cfm?page=2011\\_066.cfm&leg\\_type=Regs&isbncln=9780779757336](http://www.qp.alberta.ca/1266.cfm?page=2011_066.cfm&leg_type=Regs&isbncln=9780779757336).

<sup>4</sup> Some frequently asked questions are here: <http://www.law-faqs.org/alberta-faqs/family-law/adult-interdependent-relationships/>. See Catherine Brown & Kyle T. Gardiner, *The Rights of Unmarried Cohabitants in Canada*, 24 TRUSTS & TRUSTEES 1, 86, 89 (2018).

<sup>5</sup> Haw. Rev. Stat. Ann. § 572C-1 et seq. (2019)(originally enacted in 1997)

<sup>6</sup> Colo. Rev. Stat. Ann. § 15-22-101 et seq. (2019)(originally enacted in 2009).

<sup>7</sup> For further description, see the Oct. 14, 2017 memo on *Statutory and Scholarly Approaches to the Economic Rights of Unmarried Cohabitants* (in the Sharefiles).

- c. The French PACs (Pacte Civil de Solidarité) provides an alternative model.<sup>8</sup>
  - i. **Who:** Unmarried couples
  - ii. **Elements:** The couple must sign an agreement, either on a standard form or a more individualized agreement.<sup>9</sup>
  - iii. **What:** The parties agree to live together as a couple and share household expenses and ordinary debts incurred during the cohabitation. As is true with getting married, the partners are entitled to take leave from work when entering into a PACS. There are no inheritance rights, although the surviving partner does have some protections (such as housing and taxes if any assets are inherited). The PACS can be dissolved by either party by registering the request for dissolution.
  - iv. **How:** The pact must be registered with the civil registry, although the couple can appear before a notary, who will then undertake the registration. The requirements are:
    - 1. PACS agreement (personalized agreement or official form)
    - 2. Joint declaration of a civil solidarity pact (PACS)
    - 3. Birth certificates
    - 4. Valid identity documents

**d. Benefits and Drawbacks:**

**i. Pro:**

- 1. This allows for certainty for nonmarital partners so that they can choose whether to create rights *inter se*.
- 2. This provides a simple and efficient mechanism for courts to determine legal rights.

- ii. **Con:** This option raises enactability issues, as some states have abolished the status of civil union or domestic partnership following the Supreme Court's *Obergefell* decision, and no state has followed the leads of Hawaii and Colorado in creating reciprocal beneficiaries (1997) or designated beneficiaries (2009).

**3. STATUS:** Couples would obtain rights based on having established joint lives together.

- a. Alberta's Adult Interdependent Relationships Act<sup>10</sup> also provides that two people who have established such a relationship are entitled to most of the

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<sup>8</sup> E.g., Service-Public-Fr., *Civil Solidarity Pacts (Pacs)* (n.d.), <https://www.service-public.fr/particuliers/vosdroits/N144> (translated); Notaires de France, *Civil Partnerships (Pacs)* (2017), <https://www.notaires.fr/en/couple-family/civil-partnership-pacs>; U.S. Embassy – France, *Marriage and PACS (Civil Partnerships) in France* (2018), [https://fr.usembassy.gov/wp-content/uploads/sites/50/acs\\_marriage-in-france.pdf](https://fr.usembassy.gov/wp-content/uploads/sites/50/acs_marriage-in-france.pdf).

<sup>9</sup> Service-Public-Fr., *To Pacser* (2019), <https://www.service-public.fr/particuliers/vosdroits/F1618> (“Future partners must write and sign an agreement, and ‘[i]t must at least mention the reference to the law instituting the PACS: ‘We, X and Y, conclude a civil solidarity pact governed by the provisions of [] the civil code.’ The convention can be more complete and specify the conditions of participation of each one in the common life”).

<sup>10</sup> Adult Interdependent Relationships Act, S.A., ch. A-4.5 (2002) (Alberta, Can.).

same economic rights upon dissolution or death as married couples at the end of the relationship via separation or death.

- i. **Who?** Two people who satisfy the Act's requirements, and where one is not being paid to provide care.<sup>11</sup>
- ii. **Elements:** A relationship of interdependence is when two people are not married to one another but:
  1. share one another's lives
  2. are emotionally committed to one another;
  3. function as an economic and domestic unit;<sup>12</sup> and
  4. satisfy the time requirements:
    - a. for at least 3 years or
    - b. of some permanence (and less than 3 years) if the couple has a child.
- iii. **What:** At dissolution:
  1. Division of property is the same as for married couples<sup>13</sup>
  2. Partner support is available in the same manner as for a married couple.<sup>14</sup>
  3. Inheritance rights are similar to those of married couples.<sup>15</sup>
- iv. **How:** Appears to be established through a court proceeding.

b. **American Law Institute proposal – Domestic Partners:** The ALI, in its Principles of the Law of Family Dissolution,<sup>16</sup> provides rights at the end of relationship for “domestic partners” who share a life and a primary residence for a significant time period.<sup>17</sup> Its primary goals are to allocate property and financial losses that result, for example, from a loss of earning capacity due to one party's disproportionate time spent caretaking.<sup>18</sup>

- i. **Who:** Two people who are not married to each other

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<sup>11</sup> Note that there are some differences between the requirements for entering into an agreement and for claiming the status. For example, to attain the status, one partner can be married (although not living with that person's spouse), although a married person cannot enter into an agreement. Sections 5, 7, <https://www.canlii.org/en/ab/laws/stat/sa-2002-c-a-4.5/latest/sa-2002-c-a-4.5.html>. On the other hand, while two people related by blood or adoption can choose to enter into an enforceable adult interdependent relationship agreement, they will not qualify based simply on status. Section 3(2).

<sup>12</sup> Alberta, *Family Law Changes: Bill 28 updates property division laws to include unmarried partners and improve child support for adult children with disabilities* (2019), <https://www.alberta.ca/family-law-changes.aspx>.

<sup>13</sup> Laura Buckingham, *From Recommendation to Legislation: Bill 28 Implements ALRI's Recommendations about Property Division for Common-law Couples* (Dec. 12, 2018), <https://ablawg.ca/2018/12/12/from-recommendation-to-legislation-bill-28-implements-alris-recommendations-about-property-division-for-common-law-couples/>

<sup>14</sup> Alberta Government Resolution Services, *Spousal/Partner Support* 6 (2017), <https://www.alberta.ca/assets/documents/rcas-general-information-spousal-and-partner-support.pdf>. This remains unchanged by the 2018 amendments.

<sup>15</sup> See Brown & Gardiner, *supra* note \_\_\_\_.

<sup>16</sup> Depending on copyright, the provisions can be set out in Appendix B.

<sup>17</sup> Principles of the Law, Family Dissolution § 6.01 (2002).

<sup>18</sup> *Id.* at § 6.02 (1). Other potential losses identify those resulting from a short or long-term relationship.

- ii. **Elements:** Persons who share a primary residence can qualify as domestic partners in a number of different ways, including:
    - 1. maintaining “a common household [] with their common child” for a continuous time period;<sup>19</sup>
    - 2. maintaining a “common household” for a specified time period; or
    - 3. “proving that for a significant period of time the parties shared a primary residence and a life together as a couple.”
  - iii. **What:**
    - 1. Division of “domestic partnership property” in the same manner as marital property.<sup>20</sup>
    - 2. “Compensatory payments” can be awarded in the same manner as if the domestic partners had been married.<sup>21</sup>
  - iv. **How:** This seems to be guidance for a court proceeding.
- c. “De Facto Marriage”<sup>22</sup>: Professor Larry Waggoner proposes that two people who have a “common household” and are in a “committed relationship” be considered married de facto.
- i. **Who:** The parties must be eligible to marry.
  - ii. **Elements:**
    - 1. “common household” means that the parties share a residence, even if each has another place to live.
    - 2. “committed relationship” means that “two individuals have chosen to share one another's lives in a long-term and intimate relationship of mutual caring.”<sup>23</sup> The existence of such a relationship is assessed by a series of factors, including whether they have held themselves out as married or as permanently committed to one another. A couple is presumed to be in a committed relationship if they have lived in a common household with their child for a set period.
  - iii. **What:** They have all of the same rights under federal and state law as other married couples.<sup>24</sup>
  - iv. **How:** The relationship must be established via court order.<sup>25</sup>

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<sup>19</sup> *Id.* at § 6.03. “Common household,” “common child,” and “shar[ing] a life together” are each defined by the Act.

<sup>20</sup> *Id.* at § 6.05. Domestic-partnership property is defined as property that would have been marital property if the parties had been married rather than domestic partners. *Id.* at § 6.04.

<sup>21</sup> *Id.* at § 6.06.

<sup>22</sup> Lawrence W. Waggoner, *Marriage Is on the Decline and Cohabitation Is on the Rise: At What Point, If Ever, Should Unmarried Partners Acquire Marital Rights?*, 50 Fam. L.Q. 215, 239 (2016). His proposal is set out in Appendix C.

<sup>23</sup> *Id.* at 240.

<sup>24</sup> *Id.* at 246.

<sup>25</sup> *Id.* at 242.

- d. Committed Intimate Relationship: Beginning in 1984, the Washington Supreme Court held that courts must make a “just and equitable disposition of the property” for couples in a “meretricious” relationship.<sup>26</sup>
  - i. **Who:** Two cohabiting parties.
  - ii. **Elements:**
    - 1. Such a relationship “is a stable, marital-like relationship,” where both parties cohabit knowing that they are not married.<sup>27</sup>
    - 2. Relevant factors “include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties.”<sup>28</sup>
  - iii. **What:** Parties in a committed intimate relationship are presumed to be entitled to property division upon dissolution and death. The goal is to prevent unjust enrichment.
- e. **Benefits and Drawbacks:**
  - i. **Pro:** This protects dependencies created during relationships.
  - ii. **Con:**
    - 1. After considering the options, the Study Committee concluded that a conscriptive model such as the ALI domestic partnership approach or the de facto marriage scheme proposed by Professor Lawrence Waggoner [] would probably not achieve widespread acceptance in the states. Such a model would likely be viewed as a resurrection of common law marriage and would seem to discount the reasons many cohabiting couples, particularly older couples, choose not to marry.<sup>29</sup>
    - 2. There are enactability concerns, given that no state has adopted the ALI’s Principles (2002).
- 4. A fourth option could be claims of unjust enrichment. As the ERUC Study Committee noted, most states recognize equitable remedies, such as unjust enrichment, between cohabitants.<sup>30</sup>
  - a. **Who:** Any two nonmarital partners
  - b. **Elements:** The Restatement of Restitution states:  
If two persons have formerly lived together in a relationship resembling marriage, and if one of them owns a specific asset to which the other has made substantial, uncompensated contributions in the form of property or services, the person making such contributions has a claim in restitution against the owner as

<sup>26</sup> *Matter of Marriage of Lindsey*, 678 P.2d 328, 331 (Wash. 1984). The Court originally referred to a “meretricious relationship” but changed it to “committed intimate” relationship in 2007. *Olver v. Fowler*, 168 P.3d 348, 350 (Wash. 2007).

<sup>27</sup> *Connell v. Francisco*, 898 P.2d 831, 834 (Wash. 1995).

<sup>28</sup> *Id.* The duration of the relationship is an important, but there is no “magical” number. See *Lindsey*, 678 P. 2d 328 (the meretricious relationship was less than two years).

<sup>29</sup> Report of Study Committee on the Economic Rights of Unmarried Cohabitants 6 (Dec. 5, 2017).

<sup>30</sup> *Id.* at 2.

necessary to prevent unjust enrichment upon the dissolution of the relationship.<sup>31</sup>

- c. **What:**<sup>32</sup> A party is entitled to recovery for contributions to the acquisition of business or property interests that are unjustly retained by the other. This could include contributions in the form of homemaking services.
- d. **Benefits and Drawbacks:**
  - i. **Pro:** This ensures that the existence of a nonmarital relationship does not prevent a claim based on unjust enrichment.
  - ii. **Con:** Unjust enrichment claim can raise complex evidentiary issues.

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<sup>31</sup> Restatement (Third) of Restitution and Unjust Enrichment § 28 (2011).

<sup>32</sup> Examples from the Restatement are set out in Appendix D.

## **Appendix A: Adult Interdependent Partners Required Form**

Adult Interdependent Partner Agreement

BETWEEN: (Name and address of adult interdependent partner)  
and

(Name and address of adult interdependent partner)

We understand that by entering into this Agreement we will become each other's adult interdependent partner and will have all the benefits and obligations of adult interdependent partners under Alberta law.

1 We agree that

- (a) each of us is 16 years of age or older,
- (b) neither of us is a party to an ongoing marriage or adult interdependent partner agreement, and
- (c) we are living or intend to live together in a relationship of interdependence.

2 We understand that this Agreement will expire if we become former adult interdependent partners pursuant to the Adult Interdependent Relationships Act.

In witness whereof we have executed this Agreement in the (city, town, county) of (province, state, country) this day of , 20 .

[Signatures of parties and witnesses]

NOTES:

- 1. Each adult interdependent partner's signature must be witnessed by 2 witnesses.
- 2. If either adult interdependent partner is under the age of 18 years, the guardians of that person must sign above indicating their consent to the person entering into the Adult Interdependent Partner <sup>33</sup>

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<sup>33</sup> Reprinted from [http://www.qp.alberta.ca/documents/Regs/2011\\_066.pdf](http://www.qp.alberta.ca/documents/Regs/2011_066.pdf)



## **Appendix B: ALI Principles of Family Dissolution**

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### **§ 6.03 Determination That Persons Are Domestic Partners**

(1) For the purpose of defining relationships to which this Chapter applies, domestic partners are two persons of the same or opposite sex, not married to one another, who for a significant period of time share a primary residence and a life together as a couple.

(2) Persons are domestic partners when they have maintained a common household, as defined in Paragraph (4), with their common child, as defined in Paragraph (5), for a continuous period that equals or exceeds a duration, called the cohabitation parenting period, set in a rule of statewide application.

(3) Persons not related by blood or adoption are presumed to be domestic partners when they have maintained a common household, as defined in Paragraph (4), for a continuous period that equals or exceeds a duration, called the cohabitation period, set in a rule of statewide application. The presumption is rebuttable by evidence that the parties did not share life together as a couple, as defined by Paragraph (7).

(4) Persons maintain a common household when they share a primary residence only with each other and family members; or when, if they share a household with other unrelated persons, they act jointly, rather than as individuals, with respect to management of the household.

(5) Persons have a common child when each is either the child's legal parent or parent by estoppel, as defined by § 2.03.

(6) When the requirements of Paragraph (2) or (3) are not satisfied, a person asserting a claim under this Chapter bears the burden of proving that for a significant period of time the parties shared a primary residence and a life together as a couple, as defined in Paragraph (7). Whether a period of time is significant is determined in light of all the Paragraph (7) circumstances of the parties' relationship and, particularly, the extent to which those circumstances wrought change in the life of one or both parties.

(7) Whether persons share a life together as a couple is determined by reference to all the circumstances, including:

- (a) the oral or written statements or promises made to one another, or representations jointly made to third parties, regarding their relationship;
- (b) the extent to which the parties intermingled their finances;
- (c) the extent to which their relationship fostered the parties' economic interdependence, or the economic dependence of one party upon the other;
- (d) the extent to which the parties engaged in conduct and assumed specialized or collaborative roles in furtherance of their life together;
- (e) the extent to which the relationship wrought change in the life of either or both parties;
- (f) the extent to which the parties acknowledged responsibilities to each other, as by naming the other the beneficiary of life insurance or of a testamentary instrument, or as eligible to receive benefits under an employee-benefit plan;

- (g) the extent to which the parties' relationship was treated by the parties as qualitatively distinct from the relationship either party had with any other person;
- (h) the emotional or physical intimacy of the parties' relationship;
- (i) the parties' community reputation as a couple;
- (j) the parties' participation in a commitment ceremony or registration as a domestic partnership;
- (k) the parties' participation in a void or voidable marriage that, under applicable law, does not give rise to the economic incidents of marriage;
- (l) the parties' procreation of, adoption of, or joint assumption of parental functions toward a child;
- (m) the parties' maintenance of a common household, as defined by Paragraph (4).

Principles of the Law of Family Dissolution § 6.03 (2002)

## Appendix C: Professor Lawrence Waggoner's Draft Uniform De Facto Marriage Act<sup>34</sup>

[]

**Section 2. De Facto Marriage; De Facto Spouses; Consequences.** For purposes of all statutes in this state, two individuals are married in fact to one another if their relationship meets the requirements of this [act]. If so, their marriage is a de facto marriage and they are de facto spouses. A de facto marriage has the same status as a formal marriage. The parties to a de facto marriage are spouses. If one of them dies, the survivor is the decedent's surviving spouse.

**Section 3. De Facto Marriage; Requirements.** To be married de facto, the individuals must (i) be unmarried adults; (ii) not be prohibited from marrying each other under the law of this state by reason of a \*240 blood relationship; and (iii) must be or have been sharing a common household in a committed relationship.

**Section 4. Common Household.** For purposes of sections 3 and 6, “sharing a common household” or “shared a common household” means that the individuals shared the same place to live, whether or not one or both had other places to live and whether or not one or both were physically residing somewhere else at the time in question. The right to occupy the common household need not have been in both of their names.

**Section 5. Committed Relationship; Factors.** For purposes of section 3, a “committed relationship” is a relationship in which two individuals have chosen to share one another's lives in a long-term and intimate relationship of mutual caring. Although no single factor or set of factors determines whether a relationship qualifies as committed, the following factors are among those to be considered:

- (1) the purpose, duration, constancy, and degree of exclusivity of the relationship;
- (2) the degree to which the individuals intermingled their finances, such as by maintaining joint checking, credit card, or other types of accounts, sharing loan obligations, sharing a mortgage or lease on the household in which they lived or on other property, or titling the household in which they lived in joint tenancy;
- (3) the degree to which the individuals formalized legal obligations, intentions, and responsibilities to one another, such as one or both naming the other as primary beneficiary of life insurance or employee benefit plans, as agent to make health care decisions, or as a significant beneficiary of a will or trust;
- (4) whether the couple shared in parenting a child and the degree of joint caring and support given the child; and
- (5) the degree to which the individuals held themselves out to others as married or the degree to which the individuals held themselves out to others as emotionally and financially committed to one another on a permanent basis.

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<sup>34</sup> See Waggoner, *supra* nn. \_\_\_, at 239-240.

**Section 6. Presumption.** Two individuals are presumed to be or have been in a committed relationship if they shared a common household with their minor child for a continuous period totaling [four] or more years. A child is “their child” if the child is treated as their child under the law of this state. The presumption can only be rebutted by clear and convincing evidence.

## Appendix D: Selected examples from the Restatement of Restitution<sup>35</sup>

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### Illustrations:

1. A and B are divorced after 15 years of marriage. One year later they resume their family life without remarrying, continuing to live together for a further 20 years before effecting a permanent separation. Five children are born of the marriage; two more children are born to A and B during their period of unmarried cohabitation. During the entire period of their life together, A and B hold themselves out to the community as married. Both A and B have been regularly employed, except during periods of childbirth; although B had the larger income, the court finds that the parties made approximately equal contributions to the support of the family, taking A's services into account. When A and B ultimately separate, their assets consist of a house, a car, and several certificates of deposit, all titled in the name of B. Common-law marriage is not recognized in the jurisdiction; nor do former domestic partners incur economic obligations to each other because of their status as such. The court may order an equitable division of the house, the car, and the certificates of deposit. The legal theories authorizing this outcome include A's claim against B by the rule of this section.

2. A and B live together on B's farm as same-sex partners for a period of 10 years. Although A has full-time employment elsewhere, A devotes substantial additional time and labor to the maintenance and operation of B's farm and of an antiques business established by B. Both enterprises are profitable. Following the termination of the relationship, A asserts a claim against B on a theory of unjust enrichment, seeking compensation for unpaid services to B's farm and antiques business. The court observes that A paid no rent; that A made no contribution to the taxes, utilities, or other expenses of the parties' shared residence; that B bore a variety of A's personal expenses, including car payments and credit card bills; and that A was accepted as a member of B's immediate family, celebrating holidays with them and receiving gifts from family members. Based on these observations, the court concludes that A's services to B were presumptively gratuitous; moreover, that benefits conferred by A in the course of the parties' relationship were adequately compensated by benefits received. A is not entitled to restitution from B by the rule of this section.

...

### Illustrations:

3. A, a 56-year-old dairy farmer, meets B, a 40-year-old school teacher, following the death of A's wife of 30 years. They establish an intimate relationship. A proposes marriage; B refuses. The relationship continues, however, while A makes numerous gifts to B in the hope of inducing her to change her mind. B obtains access to A's bank account, withdrawing substantial sums with his permission. A makes a will leaving all his property to B and a deed conveying his farm to himself and B as joint tenants. A undertakes extensive alterations to the

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<sup>35</sup> Restatement (Third) of Restitution and Unjust Enrichment § 28 (2011).

- farmhouse in furtherance of the parties' "domestic plans," then conveys to B his remaining interest in the realty. Some months later, B ousts A from the property, obtaining sole possession of house, farm, and equipment and leaving A with assets of \$300. A has a claim under this section to recover his property, other than those items that the court identifies as valid and unqualified gifts.
4. After five years of a personal relationship during which they maintain separate residences, A and B decide to build a house together. Each contributes \$25,000 to the price of a building lot that they purchase as tenants in common. A, an architect, designs the new house. Selling the condominium that was his previous residence, A uses the proceeds to defray a third of the \$500,000 construction cost. B contributes the remainder. A later quitclaims his interest in the property to B. The parties live together in B's new house for a year before B asks A to move out. When he refuses, she evicts him by changing the locks. The appraised value of the property is now \$600,000. A sues B on a theory of unjust enrichment. The trial court determines that A did not intend to make an outright gift to B in connection with the house: rather, he contributed to the project in the expectation that he would live in the house for the rest of his life. A has a claim against B under this section for the value of his contributions in money and services.
5. A and B live together for 20 years without being married. They begin with no assets, living in rental housing. Both are regularly employed. Later they acquire a mobile home on a few acres of land. With the help of friends and relatives, B builds a log home on the same site. Title to the realty is solely in B's name. When the parties separate, B sells the log home for \$90,000. Neither party has any other significant assets. There is no evidence of a contract between them. On the other hand, the court finds that A's contributions from her wages to household expenses allowed B to use his earnings to acquire the real estate, and that A's performance of household chores permitted B to spend his spare time building the log home. All in all, the court concludes that the parties contributed equally to the acquisition of this asset, and that they should be treated as equitable owners in equal shares. A has a claim against B under this section for \$45,000, secured (if need be) by an equitable lien on the sale proceeds.
- 6. A and B are engaged to be married. B moves into A's residence on Blackacre, a tract of 22 acres on which A operates a dog kennel. B asks if he can build a garage on A's property in which to store his tools. A consents, and B begins construction on two acres designated for this purpose by A. When B runs out of funds to complete the project, A conveys the two acres to B to enable him to obtain a mortgage loan. A acts in the expectation that the property in question will belong to the couple jointly after they are married, and without any intention to effect a permanent subdivision of Blackacre. A continues to pay the taxes on all 22 acres and uses B's two acres to store personal property and exercise her dogs. After B obtains the necessary loan he completes the planned garage as a residence, moves into it, evicts A from the two-acre tract, and breaks the engagement. A has a claim against B under this section for the unimproved value of the two acres conveyed. (Under an alternative approach, the court might permit A to recover the tract in question on paying B the value added by the improvement. [])

- 7. A and B, unmarried cohabitants, pay current expenses out of a joint bank account to which each contributes current income. Drawing on an inheritance, A advances several large sums of money to B for major expenditures, including B's divorce settlement and B's purchase of real estate. The parties make no agreement concerning repayment of these advances. Following the termination of their relationship, A seeks reimbursement on a theory of unjust enrichment. Evidence at trial permits the inference that the measurable addition to B's wealth as a result of A's advances is \$65,000, counting both assets acquired (such as realty) and liabilities discharged (such as the divorce settlement), but not counting either occasional gifts or the difference in the parties' contributions to current expenses. A has a claim against B under this section for \$65,000.
- 8. A and B live together as unmarried cohabitants for six years; for half this time they are engaged to be married. A is regularly employed as a nurse while B continues as a full-time student, attending medical school and completing his residency. A has the primary income during the couple's life together; over the years she contributes \$100,000 to the repayment of B's student loans and to the payment of B's medical school tuition. The engagement is terminated and the relationship ends when B begins medical practice. A sues B on a theory of unjust enrichment, seeking an equitable division of the anticipated earnings from B's professional career. A's claim to a share of B's future earnings rests on an assertion of status-based property obligations between unmarried domestic partners. See Principles of the Law of Family Dissolution: Analysis and Recommendations, Chapter 6. Such rights are recognized in some jurisdictions, but they are outside the scope of this Restatement. By the rule of this section, A has a claim to recover \$100,000 but no interest in B's future earnings.
- 9. A joins a tennis club owned and operated by B. The two begin a personal relationship, living together in a nearby condominium. A goes to work at the club, eventually becoming its full-time manager. B gives A money from time to time, but A receives no regular salary; the payments she receives are much less than a market wage for comparable employment. After A has worked six years as manager of the club, the parties' personal relationship ends and A is discharged. Although the evidence is insufficient to establish a contract of employment, A has a claim against B under this section for the value of A's uncompensated services to B's business.
- 10. Unmarried cohabitants A and B purchase Blackacre, combining assets that each acquired prior to their life together. At the time of purchase the parties regard themselves as joint owners of the property, but title is recorded in B's name alone. The relationship becomes antagonistic, and B evicts A. A has a claim under this section to a fractional interest in Blackacre corresponding to A's proportional contribution to the purchase price.