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Rights of Parents & Cohabitants in Connecticut

A Guide to resources in the Law Library

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"All light is valuable on a darken path."

DeQuincy

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Parents Who Live Separately in Connecticut

A Guide to Resources in the Law Library

- "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court [U.S. Supreme Court]. Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.ed.2d 49, 56 (2000).
- **"Father and mother joint guardians.** The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." CONN. GEN. STAT. § 45a-606 (2008).
- **"Orders re children where parents live separately. Commencement of proceedings.** In all cases in which the parents of a minor child live separately, the superior court for the judicial district where the parties or one of them resides may, on the application of either party and after notice given to the other, make any order as to the custody, care, education, visitation and support of any minor child of the parties, subject to the provisions of sections 46b-54, 46b-56, 46b-57 and 46b-66. Proceedings to obtain such orders shall be commenced by service of an application, a summons and an order to show cause.." CONN. GEN. STAT. § 46b-61 (2008).
- **U.S. Supreme Court:** "The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed. 49 (2000) (Emphasis added)
- **"Connecticut courts** likewise have recognized the constitutionally protected right of parents to raise and care for their children When legislation affects a fundamental constitutional right, it must be strictly scrutinized." Fish v. Fish, 285 Conn. 24, 41 (2008). (Emphasis added).
- **Standing Requirement:** "Where fundamental rights are implicated, such as in the present case, standing serves a function beyond a mere jurisdictional prerequisite. It also ensures that the statutory scheme is narrowly tailored so that a person's personal affairs are not needlessly intruded upon and interrupted by the trauma of litigation." Roth v. Weston, 259 Conn. 202, 219, 789 A.2d 431 (2002). (Emphasis added).
- **Dissolution of marriage, legal separation and annulment**
Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent.

Orders re therapy, counseling and drug or alcohol screening. Conn. Stats. § 46b-56(a)(2008).

Rights of Fathers in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to parental rights and status of fathers in paternity, termination of parental rights, adoption, custody, and visitation actions. Includes right to notice and counsel.
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- “The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor.”
CONN. GEN. STAT. §45a-606 (2008)
- STATUTES:**
- CONN. GEN. STAT. (2008)
 - § 45a-606. Father and mother joint guardians.
 - § 46b-61. Orders re children where parents live separately
 - § 46b-215. Relatives obliged to furnish support, when.
Orders.
- COURT RULES**
- CONNECTICUT PRACTICE BOOK (2008)
 - Chapter 25 *Superior Court - Procedure in Family Matters*
 - § 25-3. Action for custody of minor children
 - § 25-4. Action for visitation of minor child
- CASES:**
- **U.S. Supreme Court**
 - Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.ed.2d 49, 58 (2000). “Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.”
 - Stanley v. Illinois, 405 U.S. 645, 658, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972). “The State of Illinois assumes custody of the children of married parents, divorced parents, and unmarried mothers only after a

hearing and proof of neglect. The children of unmarried fathers, however, are declared dependent children without a hearing on parental fitness and without proof of neglect. Stanley's claim in the state courts and here is that failure to afford him a hearing on his parental qualifications while extending it to other parents denied him equal protection of the laws. We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody."

- Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed. 2d 297 (1979).
- Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978).
- Lehr v. Robertson, 463 U.S. 248, 266-267, 103 S.Ct. 2985, 77 L.Ed. 2d 614 (1983). "the existence or nonexistence of a substantial relationship between parent and child is a relevant criterion in evaluating both the rights of the parent and the best interests of the child We therefore found that a Georgia statute that always required a mother's consent to the adoption of a child born out of wedlock, but required the father's consent only if he had legitimated the child, did not violate the Equal Protection Clause We have held that these statutes may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child."

- **Connecticut**

- Roth v. Weston, 259 Conn. 202, 205, 789 A. 2d 431 (2002). "We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation."
- Weidenbacher v. Duclos, 234 Conn. 51, 661 A.2d 988 (1995).
See [Table 1](#)

**WEST KEY
NUMBER:**

- Children out-of-wedlock
 - # 20 Custody
 - # 21-23 Support
 - # 30-79 Paternity proceedings

ENCYCLOPEDIAS:

- 41 AM JUR 2D *Illegitimate Children* (2005).
 - § 92. Duty of putative father
 - § 100. Rights of father
 - § 101. Rights of father—Visitation
- George L. Blum, Annotation, Right of Jailed or Imprisoned Parent to Visit from Minor Child, 6 ALR6th 483(2005).
- Robin Cheryl Miller, Annotation, *Right Of Putative Father To Visitation With Child Born Out Of Wedlock*, 58 ALR5th 669 (1998).
- Russell G. Donaldson, Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 ALR4th 724 (1985).
- Annotation, *Comment Note—Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 ALR3d 421(1976).
- W.E. Shipley, Annotation, *Woman's Right To Have Abortion Without Consent Of, Or Against Objections Of, Child's Father*, 62 ALR3d 1097 (1975).
- W.E. Shipley, Annotation, *Death Of Putative Father As Precluding Action For Determination Of Paternity Or For Child Support*, 58 ALR3d 188 (1974).
- Thomas J. Goger, Annotation, *Rights Of Putative Fathers To Custody Of Illegitimate Child*, 45 ALR3d 216 (1972).
- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 ALR2d 497 (1957).

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 47. Property rights and agreements between unmarried cohabitants
- 5 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2008).
 - Chapter 30 Rights of putative fathers to custody and visitation
 - § 30.02. The putative father's standing to seek custody of his child
 - § 30.03. Rights of the putative father vs. the natural mother or legal parent
 - § 30.04. Rights of the putative father vs. a non-parent
 - § 30.05. Rights of the putative father to visitation
 - § 30.06. Right of the putative father to have his child bear his surname

- 2 DISPUTED PATERNITY PROCEEDINGS (2008).
 - Chapter 27. The rights of putative fathers
 - § 27.02 The constitutional foundation
 - § 27.03. The constitutional implications of the
 - protections of putative fathers and the extent of those rights in particular cases
 - [2]. Paternity actions
 - [3]. Custody and visitation
 - [4]. Adoptions, termination of parental rights, and notice issues
- 1 JOAN HEIFETZ HOLLINGER ET AL. ADOPTION LAW & PRACTICE (DECEMBER 2007).
 - § 2.04. Father of the child
 - [2]. Status of unwed fathers in adoption proceedings
 - [a] The traditional rule
 - [b] Recent constitutional cases extending rights to unwed fathers
 - [c] Determining the need for consent from unwed fathers

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Table 1 Marital Presumption of Legitimacy

Marital Presumption of Legitimacy in Connecticut	
Definition	a "presumption of legitimacy," . . . postulates that a child born in wedlock is presumed to be a legitimate child of the mother and her husband. <u>Weidenbacher v. Duclos</u> , 234 Conn. 51, 68-69, 661 A.2d 988 (1995)
Rebuttable	". . .we have held that this presumption may be rebutted by a person who presents clear, convincing and satisfactory evidence that the mother's husband is not the child's natural father Indeed, we have not limited or restricted in any way the class of persons who may present such proof and thereby overcome the presumption." Ibid, p. 69.
Not a per se bar	"In sum, there is no persuasive reason today to deny the putative father of a child born in wedlock the opportunity to rebut the presumption of legitimacy. Accordingly, we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child." Ibid., pp. 73-74.
Best interests of the child	"In deciding whether the putative father has standing, the trial court, on the basis of all the evidence before it, must determine whether the putative father has established that his interests and the best interests of the child outweigh those of the marital family unit." Ibid., pp. 76-77
Twofold task	"In accordance with our precedents, the petitioner has a twofold task ahead. First, he must prove, by clear and convincing evidence, that he is the biological father Second, the petitioner must prove to the trial court that it is in the best interests of . . . [the child] that he be awarded custody or visitation. Ibid., p.78
Legislative History	"It seems obvious then from the remarks of the chairman of the house judiciary committee at the time that the amendment in question was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from

	<p>controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage. The court concludes that in view of the legislative history resulting in the present § 46b-61 of the General Statutes, the father of an illegitimate child need no longer be limited to bringing a petition for a writ of habeas corpus to invoke the jurisdiction of the Superior Court in a question regarding custody. It is clear that it was the intent of the legislature to permit an illegitimate father to institute a cause of action regarding custody under the authority of § 46b-61, as was done in the present case." <u>Stevens v. Leone</u>, 35 Conn. Sup. 237, 239-240, 406 A.2d 402 (1979).</p>
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Rights of Mothers in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to parental rights and status of mothers in paternity actions.
- CURRENCY:**
- 2008 Edition
- DEFINITIONS:**
- "The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." CONN. GEN. STAT. § 45a-606 (2008)
 - "Once alleged parental rights of the father have been adjudicated in his favor under subsection (b) of this section, or acknowledged as provided for under section 46b-172, **his rights and responsibilities shall be equivalent to those of the mother, including those rights defined under section 45a-606.**" CONN. GEN. STAT. § 46b-172a(g) (2005) (emphasis added).
 - **Compelling disclosure of putative father. Institution of action:** "If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a decree of divorce or dissolution or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the Commissioner of Social Services, if such child is a recipient of public assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the Superior Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child." CONN. GEN. STAT. § 46b-169(a) (2008).
- STATUTES:**
- CONN. GEN. STAT. (2005)
§ 45a-606. Father and mother joint guardians.

§ 46b-61. Orders re children where parents live separately

§ 46b-160. Petition by mother or expectant mother

§ 46b-169. Compelling disclosure of name of putative father. Institution of action

§ 46b-215. Relatives obliged to furnish support, when. Orders.

COURT RULES

- CONNECTICUT PRACTICE BOOK (2005 ed.)
Chapter 25 Superior Court - Procedure in Family Matters
§ 25-68. Right to counsel in State initiated paternity actions

CASES:

- Stevens v. Leone, 35 Conn. Supp. 237, 239-240, 406 A.2d 402 (1979). "It seems obvious from the remarks of the chairman of the house judiciary committee at the time that the amendment [Conn. Gen. Stat. § 46b-61] was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage."

DIGESTS:

- ALR INDEX: *Legitimacy of children*
- ALR DIGEST: *Children Out-of-Wedlock*
- CONNECTICUT FAMILY LAW CITATIONS: *Paternity*

WEST KEY NUMBER:

- Children out-of-wedlock
20 Custody
21-23 Support
30-79 Paternity proceedings

ENCYCLOPEDIAS:

- 41 AM JUR 2D *Illegitimate Children* (2005).
§ 97. Rights of mother, generally
§ 98. —Loss of mother's right
- 14 C.J.S. *Children Out-Of-Wedlock* (1991).
§ 34. Custody in general
§ 35. Parent and nonparent
§ 36. Change of custody between parents
§ 37. Mother
- David M. Holliday, Annotation, *Paternity Proceedings: Right To Jury Trial*, 51 ALR4th 565 (1987).
- Annotation, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 ALR4th 724
- Annotation, *Right Of Natural Parent To Withdraw Valid Consent To Adoption Of Child*, 74 ALR3d 421

- Annotation, *Necessity Of Securing Consent Of Parents Of Illegitimate Child To Its Adoption*, 51 ALR2d 497 (1957).
- *Cause Of Action On Behalf Of Child Or Mother To Establish Paternity*, 6 COA2d 1 (1994).
 - Plaintiff's case for paternity
 - § 4. Generally
 - § 5. Mother's sexual intercourse with defendant
 - § 6. —Intercourse during period of child's conception
 - § 7. Absence of intercourse with other men
 - § 8. Child's biological affinity to defendant

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - § 42.2. Rights of Unmarried or Non-cohabiting Parents
- 5 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2005).
 - Chapter 30. Rights of putative fathers to custody and visitation
 - § 30.03 Rights of the putative father vs. the natural mother
- 2 DISPUTED PATERNITY PROCEEDINGS (2005).
 - Chapter 27. The rights of putative fathers
 - § 27.02 The constitutional foundation
 - § 27.03 Adoption, termination of parental rights, paternity, custody and visitation. Right to notice. Right to counsel.
- 1 ADOPTION LAW & PRACTICE (2004).
 - § 2.04[2]. Status of unwed fathers in adoption proceedings

PAMPHLETS:

- Establishing Paternity: Questions and Answers for Dads
<http://www.dss.state.ct.us/pubs/patdad.pdf>

LAW REVIEWS:

- Aviam Soifer, *Parental Autonomy, Family Rights and The Illegitimate: A Constitutional Commentary*, 7 CONNECTICUT LAW REVIEW 1 (1974).

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Duty to Support Children

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the duty of parent to support child including child who are adopted or the issue of a subsequently annulled marriage.
- DEFINITIONS:**
- “The independent nature of a child’s right to parental support was recognized by this court long before that right was codified in our statutes.” Guille v. Guille, 196 Conn. 260, 263, 492 A.2d 175 (1985).
 - Child support order “does not operate to crystallize or limit the duty of the parent to support his minor child, but merely defines the extent of the duty during the life of the order.” Rosher v. Superior Court, 71 P.2d 918.
 - **Maintenance.** “Under General Statutes . . . [§] 46b-84, the court is authorized to make orders regarding the maintenance of the minor children of the marriage. The word ‘maintenance’ means ‘the provisions, supplies, or funds needed to live on.’ Webster, Third New International Dictionary. It is synonymous with support Such orders may be in kind as well as in money.” Valente v. Valente, 180 Conn. 528, 532, 429 A.2d 964 (1980).
- STATUTES:**
- CONN. GEN. STAT. (2005)
 - § 46b-37(b). Joint duty of spouses to support family
 - § 46b-56. Superior court orders re custody and care*
 - § 46b-84. Parents’ obligation for maintenance of minor child.
 - § 46b-58. Custody, maintenance and education of adopted children
 - § 46b-60. Orders re children and alimony in annulment cases
 - § 46b-215. Relatives obligated to furnish support, when.
 - * Amended by 2005 CONN. ACTS 258 § 3 (effective October 1, 2005)
- CASES:**
- Foster v. Foster, 84 Conn. App. 311, 322, 853 A.2d 588 (2004). “It is a well established principle that child support is

premised upon a parent's obligation to provide for the care and well being of the minor child. See *Raymond v. Raymond*, 165 Conn. 735, 739, 345 A.2d 48 (1974) ("[t]he needs of the child, within the limits of the financial abilities of the parent, form the basis for the amount of support required"). Although the trial court is given wide discretion to modify child support on the basis of a substantial change in circumstances, interference with visitation alone is insufficient to warrant a reduction in child support. See *id.* (concluding that "duty to support is wholly independent of the right of visitation"). Although we do not condone the plaintiff's actions in this case, the court may not punish the child, who is the beneficiary of child support, for the sins of her mother. See *id.* Accordingly, because the court incorrectly applied the law regarding a parent's obligation to provide child support, it was an abuse of discretion for the court to have eliminated the defendant's child support obligations on the basis of the plaintiff's chronic interference with visitation. Accordingly, the order eliminating the defendant's child support obligation is vacated."

- W. v. W., 248 Conn. 487, 497-498, 728 A.2d 1076 (1999). "In the context of parental responsibilities, the duty to support the child is placed fairly on the nonparental party, not solely because of his voluntary assumption of a parental role, but, also because of the misleading course of conduct that induced the child, and the biological parent as the child's guardian, to rely detrimentally on the nonparental party's emotional and financial support of the child."
- Unkelbach v. McNary, 244 Conn. 350, 357, 710 A.2d 717 (1998). "The [Child Support] guidelines are predicated upon the concept that children should receive the same proportion of parental income that they would have received had the family remained intact Toward that end, the guidelines are income driven, rather than expense driven."
- State v. Miranda, 245 Conn. 209, 222, 715 A.2d 680 (1998). "It is undisputed that parents have a duty to provide food, shelter and medical aid for their children and to protect them from harm."
- In Re Bruce R., 234 Conn. 194, 209, 662 A.2d 107 (1995). "Connecticut child support legislation clearly evinces a strong state policy of insuring that minor child receive the support to which they are entitled."
- Timm v. Timm, 195 Conn. 202, 207, 487 A.2d 191 (1985). "It is further recognized that an order for the support of minor children is not based solely on the needs of the children but takes into account what the parents can afford to pay."

- Sillman v. Sillman, 168 Conn. 144, 358 A.2d 150 (1975).
Support and the age of majority.

SUPERIOR COURT (Unpublished)

- Fox v. Fox, No. FA90-0098219, 2002 Ct. Sup. 6090, 6092 (May 3, 2002). "It stands to reason that if child support is the right of the child and the duty of the parent, and if incarceration of the parent does not extinguish the duty to support, then incarceration of the child does not extinguish the right to be supported. This Court finds that in the present case, incarceration of the minor child does not fall within the definition of self-supporting, nor does it eliminate the need or the right of the child to be supported. Therefore, this Court does not have the authority to suspend the order of child support in full prior to the child reaching the age of majority under current Connecticut statutory law and case law."
- Decamillis v. Hasiotis, No. FA00-0630369, 2001 Ct. Sup. 12890, 12892, 2001 WL 11924 (Sep. 5, 2001). "It is implicit in the computation of current support orders that each parent's share must be computed, regardless of who requests the support order. Clearly, if either parent's support obligation is not met by providing direct support to a child in that parent's custody or by satisfactory and appropriate voluntary payments, it is not only the court's fight, but its duty, to set a support order."
- State v. Gorman, No. FA 98-0331769 S, 2000 Ct. Sup. 2938-af, 2938-ah, 2001 WL 359720 (Feb. 2, 2000). "The court finds that there is no prior court order for the payment of child support. The court finds that this support petition brought pursuant to C.G.S. 46b-215 is an appropriate vehicle to establish a current support and an arrearage order. The court finds that to do same would not violate the prohibition against retroactive modifications of child support. The court finds that it is not bound by any agreement of the parties or by their actions or failure to act through the years."

DIGESTS:

- DOWLING'S DIGEST: *Parent and Child* § 5 Liability of Parent. Support.
- CONNECTICUT FAMILY LAW CITATIONS:
CHILD SUPPORT, alteration, change, or amendment"
—Parents

WEST KEY NUMBERS:

- *Parent & Child* # 3.1. Support and education of child. Rights, duties and liabilities in general
 - (2) Father, duty to support
 - (3) Mother, duty to support
- *Divorce* # 306. Grounds for award as to support

ENCYCLOPEDIAS:

- 59 AM. JUR. 2D *Parent and Child* (2002).
 - § 41. Services and earnings of children, generally
 - § 42. Rights of respective parents
 - § 43. Property and property rights, generally
 - § 44. Compromise or release of child's rights by parent
 - § 45. Generally; basis of duty
 - § 46. What law governs
 - § 47. —Uniform Interstate Family Support Act
 - § 48. Character and extent of parental obligation
 - § 49. Obligations as limited to "necessaries"
 - § 50. Amount; discretion of the court
 - § 51. Termination of obligation by act of child
 - § 52. Shifting burden of support to child
 - § 53. Child-support agreements—between parents
 - § 54. —For support by third person
 - § 55. Obligations of respective parents
 - § 56. —Father of respective parents
 - § 57. —When one parent fraudulently misrepresents facts regarding sterility or birth control
 - § 58. —Effect of parent's death; mother as surviving parent
- 4. Effect on liability of separation from child
 - § 59. Liability of parent separated from child
 - § 60. —Where separation by act of other parent
 - § 61. —Where separation by act of child
 - § 62. —Where separation by judicial decree
- 5. Effect of Other Sources for support on Parent's Liability
 - § 63. Resort to child's estate
 - § 64. —Reimbursing parent for past expenditures
 - § 65. Trust fund for support and maintenance of child
- 6. Liability of parents for necessities of child
 - § 66. Generally
 - § 67. Child living apart from parent
 - § 68. Medical and dental services
- 7. Liability of Parents for Particular Types of Expenses
 - § 69. Education
 - § 70. —Amount and kind; higher school
 - § 71. Medical and dental care
 - § 72. Funeral expenses
- 24A AM. JUR. 2D *Divorce and Separation* (1998)
 - §§ 1001-1107. Child Support
- Annotation, *Child's Right Of Action For Loss Of Support, Training, Parental Attention, Or The Like, Against A Third Person Negligently Injuring Parent*, 11 ALR4th 549 (1982).
- Joel E. Smith, Annotation, *Parent's Obligation To Support Unmarried Minor Child Who Refuses To Live With Parent*, 98 ALR3d 334 (1980).
- J.A. Bryant, Annotation, *Parent For Support Of Child Institutionalizes By Juvenile Court*, 59 ALR3d 636 (1974).

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
Chapter 38. Child Support
 - § 38.1 Duty to support child
 - § 38.2 Statutory duty to support
 - § 38.3 Comparison of "child support" and "alimony"
 - § 38.4 Child to whom duty of support applies

LAW REVIEWS:

- Arthur E. Balbirer, *Rights And Obligations Of Custodial And Non-Custodial Parents In Connecticut*, 53 CONNECTICUT BAR JOURNAL 356 (1979).

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Child Custody Actions

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to child custody and unmarried parents, form preparation and procedure in custody actions where parents are unmarried or live separately, and the factors considered in awarding custody.

SEE ALSO: [Best Interest of the Child Standard in Connecticut](#)

STATUTES: CONN. GEN. STAT. (2008)

- Chapter 319o *Department of Social Services*
§ 17b-27. Voluntary acknowledgment of paternity program.
- Chapter 802h, Part II *Guardians of the Person of the Minor*, §§45a-603 et seq.
 - § 45a-606. Father and mother joint guardians.
 - § 45a-607. Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights.
- Chapter 815j *Dissolution of Marriage, Legal Separation and Annulment*
 - § 46b-56, as amended by P.A. 05-258 s. 3, Superior Court orders re custody, care and therapy of minor children in actions for dissolution of marriage, legal separation and annulment...
 - § 46b-61. Orders re Children where parents live separately.
 - § 46b-64. Orders of court prior to return day of complaint.
 - § 46b-66, Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § 46b-69b Parenting Education Program. Required.
- Chapter 815p *Uniform Child Custody Jurisdiction & Enforcement Act*
 - § 46b-115a Definitions
 - § 46b-115m Modification of custody determination of another state
 - § 46b-115w Procedure for registering an out-of-state

child custody order

§§ 46b-115x—46b-115gg Procedure for enforcement of child custody determination

- Chap. 815y, *Paternity Matters*, §§46b-160 et seq.
 - § 46b-172 Review of agreements; incorporation into decree. Arbitration.
 - [amended by 1999 CONN. ACTS 193 §7]
 - § 46b-172a. Filing of claim for paternity by putative father. Child as party. Attorney General as party. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgment of paternity. Claim for paternity after death of putative father.
- Chapter 816 Support Part II *Obligations of Relatives*
 - § 46b-215 Relatives obliged to furnish support, when.
 - § 46b-215(b) Attorney General as party to the case when person is receiving public assistance.

COURT RULES

CONNECTICUT PRACTICE BOOK (2008)

- Chapter 25 *Superior Court – Procedure in Family Matters*
 - § 25-3 Action for Custody of Minor Child
 - § 25-5 Automatic Orders Upon Service of Complaint or application
 - § 25-9. Answer, Cross Complaint, Claims for Relief by Defendant
 - § 25-24. Motions
 - § 25-26. Modification of Custody, alimony or support
 - § 25-28. Order of Notice
 - § 25-30. Statements to be Filed (Financial Affidavits)
 - § 25-34. Procedure for Short Calendar
 - § 25-38. Judgment Files
 - § 25-57. Affidavit Concerning Children
 - § 25-59. Closure of court room in family matters
 - § 25-60. Family division evaluations and studies
 - 25-61 Family Division
 - § 25-62 Appointment of Guardian Ad Litem

LEGISLATIVE HISTORY:

- Public Acts 1974, No. 74-169, §12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [Conn. Gen. Stat. §46b-61]
“...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

LEGISLATIVE REPORTS:

- LAWRENCE K. FURBISH, CHILD CUSTODY IN MARRIAGE DISSOLUTIONS, Connecticut General Assembly, [Office of Legislative Research](#) Report No. 99-R-0791 (August 5, 1999).

FORMS:

Official Forms

- VS-56 Acknowledgment of Paternity
- VS-57 Recision of Acknowledgment of Paternity
- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- JD-FM-161 Custody / Visitation Application
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-163 Case Management Agreement
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-165A Case Management Dates
- JD-FM-167 Motion for Notice by Publication or Mail in Family Cases
- JD-FM-168 Order of Notice by Publication or Mail in Family Cases
- JD-FM-175 Certification of Notice in Family Cases (Public Assistance)
- JD-FM-178 Affidavit Concerning Military Service
- JD-FM-160 Answer
- JD-FM-183 Custody/Visitation Agreement
- JD-FM-6 Financial Affidavit
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD-FM-173 Motion for Contempt
- JD-FM-174 Motion for Modification

Unofficial Forms

- **Temporary or Pendente Lite Orders**
MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 106-116 (1991)
- **Modification of Automatic Orders**
BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 369 (1998). *Motion for Relief From Automatic Orders*
REPRESENTING YOURSELF IN A CUSTODY CASE: A HOW TO DO IT YOURSELF BOOKLET, Legal Assistance Resource Center of Connecticut, Sample 7 (2003).
- **Exparte Orders**
MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 145-150 (1991)

CASES:

- Foster v. Foster, 84 Conn. App. 311, 320, 853 A.2d 588 (2004). "As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent's right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all the interests, the court's refusal to grant a continuance did not

result in a constitutional deprivation.”

- Knock v. Knock, 224 Conn. 776,788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed that the children were living in a familiar and stable environment with love and attention from their paternal grandparents; that the plaintiff at times had an adverse effect upon the children; and that the plaintiff’s psychological instability was such that it posed a threat to the children’s well-being.”
- Stevens v. Leone, 35 Conn. Supp. 237, 239, 406 A.2d 402 (1979). “It seems obvious ... that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage.”
- Rudolewicz v. Rudolewicz, Superior Court, judicial district of Hartford at New Britain, Docket No. 410812 (August 20, 1986), 1 C.S.C.R. 664, 666.
20 factors the court should consider when determining the “best interest of the child”

WEST KEY NUMBERS:

- *Children Out-of-Wedlock* #20.1– #20.13
 - #20.1 Rights of mother
 - #20.2 Rights of father
- *Child Custody* #20 – #88 Grounds and factors in general
- *Infants* #19
 - #19.2 Matters considered in awarding custody
 - #19.3 Determination of right to custody

ENCYCLOPEDIAS:

- George L. Blum, Annotation, *Religion as Factor in Child Custody Cases*, 124 A.L.R. 5th 203 (2004).
- Robin Cheryl Miller, Annotation, *Child Custody and Visitation Rights Arising From Same-Sex Relationship*, 80 A.L.R. 5th 1 (2000).
- Linda A. Francis, Annotation, *Mental Health of Contesting Parent as Factor in Award of Child Custody*, 53 A.L.R. 5th 375 (1997).
- Elizabeth Trainor, Annotation, *Initial Award or Denial of Child Custody to Homosexual or Lesbian Parent*, 62 A.L.R. 5th 591 (1998).
- Harriet Dinagar Milks, Annotation, *Smoking as Factor in Child Custody and Visitation Cases*, 36 A.L.R. 5th 377 (1996).

- Danny R. Veilleux, Annotation, *Age of Parent as Factor in Awarding Custody*, 34 A.L.R. 5th 57 (1995).
- Mary E. Taylor, Annotation, *Parent's Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5th 534 (1994).
- Claudia G. Catalano, Annotation, *Child Custody and Visitation Rights of Person Infected with AIDS*, 86 A.L.R. 4th 211 (1991).
- 11 AM. JUR. TRIALS 347 *Child custody litigation* (1966).

**TEXTS &
TREATISES:**

- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, REPRESENTING YOURSELF IN A CUSTODY CASE: A HOW TO DO IT YOURSELF BOOKLET (2003).
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS chs. 40-42 (2000).
 - Ch. 40 *Jurisdiction to Enter and Enforce Custody Orders*
 - Ch. 41 *Pendente Lite Custody & Visitation*
 - Ch. 42 *Child Custody and Visitation*
- BARBARA KAHN STARK, FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT
 - Chapter. 8 (2003).
- LAW PRACTICE HANDBOOKS, FAMILY LAW PRACTICE IN CONNECTICUT ch. 10 (1996). [Jeffrey D. Ginzberg, *Child Custody and Visitation*.]
- CUSTODY DISPUTES: WHAT TO EXPECT FROM THE FAMILY RELATIONS OFFICE. Published by the Legal Assistance Resource Center of Connecticut (2001).
- AMERICAN BAR ASSOCIATION, STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES, *reprinted in* 37 FAM. L. Q. 131 (2003). (*approved by the ABA House of Delegates, Aug. 2003*)
- AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS & RECOMMENDATIONS ch. 2 (2002). *The Allocation of Custodial and Decisionmaking Responsibility for Children*
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE ch. 10 (2004). *Custody Disputes Between Parents*
- 5 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE ch. 30 (2004). *Rights of Putative Fathers to Custody & Visitation*
- MIMI E. LYSTER, CHILD CUSTODY: BUILDING PARENTING AGREEMENTS THAT WORK (3d ed., 1999).

ARTICLES:

- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. Q. 105 (2003).
- Stephen J. Bahr et al., *Trends in Child Custody Awards: Has the Removal of Maternal Preference Made a Difference?* 28 FAM. L. Q. 247 (1994).

COMPILER:

• Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 2 Factors Court May Consider When Awarding Custody

Effective October 1, 2005

"In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors:

1. The temperament and developmental needs of the child;
2. The capacity and the disposition of the parents to understand and meet the needs of the child;
3. Any relevant and material information obtained from the child, including the informed preferences of the child;
4. The wishes of the child's parents as to custody;
5. The past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child;
6. The willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders;
7. Any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;
8. The ability of each parent to be actively involved in the life of the child;
9. The child's adjustment to his or her home, school and community environments;
10. The length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendent lite in order to alleviate stress in the household;
11. The stability of the child's existing or proposed residences, or both;
12. The mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child;
13. The child's cultural background;
14. The effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child;
15. Whether the child or a sibling of the child has been abused or neglected, as defined

repectively in section 46b-120;

16. Whether the party satisfactorily complete participation in a parenting education program established pursuant to section 46b-69b.

Section 1.5

Child Visitation Action

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to actions seeking court ordered visitation when parents are unmarried or when married couples live separately but have not initiated divorce proceedings.

SEE ALSO: [Best Interest of the Child Standard in Connecticut](#)
[Child Custody Actions in Connecticut](#)

STATUTES: CONN. GEN. STAT. (2008)

- § 45a-604. Definitions
- § 45a-606. Father and mother joint guardians
- § 46b-54. Counsel for minor children. Duties.
- § 46b-56. Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- § 46b-57. Third party intervention re custody of minor children. Preference of the child
- § 46b-59. Court may grant right of visitation to any person.
- § 46b-59a. Mediation of disputes re enforcement of visitation rights
- § 46b-61. Orders re Children where parents live separately
- § 46b-64. Orders of court prior to return day of complaint
- §§ 46b-115—46b-115gg *Uniform Child Custody Jurisdiction & Enforcement Act*

COURT RULES CONNECTICUT PRACTICE BOOK (2008)

- Chapter 25, *Superior Court - Procedure in Family Matters*
 - § 25-4 Action for Visitation of Minor Child
 - § 25-5 Automatic Orders Upon Service of Complaint
 - § 25-9 Answer, Cross Complaint, Claims for Relief by Defendant
 - § 25-23 Motions, Requests, Orders of Notice, and Short Calendar
 - § 25-24. Motions
 - § 25-26. Modification of Custody, Alimony or Support
 - § 25-27. Motion for Contempt
 - § 25-28. Order of Notice
 - § 25-30. Statements to be Filed
 - § 25-38. Judgment Files
 - § 25-50. Case Management
 - § 25-57. Affidavit Concerning Children
 - § 25-59. Closed Hearings and Records

§ 25-60. Family Division Evaluations and studies
§ 25-61. Family Division Evaluations and Studies
§ 25-62. Appointment of Guardian Ad Litem

LEGISLATIVE HISTORY:

- Public Acts 1974, No. 74-169, § 12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [§ 46b-61]
“...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

FORMS:

Official Forms

- JD-CL-12 Appearance
- JD-FM-75 Application for Waiver of Fees
- JD-FM-160 Answer
- JD-FM-161 Custody / Visitation Application
- JD-FM-162 Order to Attend Hearing and Notice to the Defendant
- JD-FM-158 Notice of Automatic Orders
- JD-FM-164 Affidavit Concerning Children
- JD-FM-164A Addendum to Affidavit Concerning Children
- JD-FM-167 Motion for Notice by Publication or Mail in Family Cases
- JD-FM-168 Order of Notice by Publication or Mail in Family Cases
- JD-FM-160 Answer
- JD-FM-176 Motion for Orders Before Judgment (Pendente Lite)
- JD-FM-6 Financial Affidavit
- JD-FM-173 Motion for Contempt
- JD-FM-174 Motion for Modification
- JD-FM-183 Custody/Visitation Agreement
- JD-FM-185 Motion for Intervention in Family Matters

Unofficial Forms

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 97 (1991). Pendente Lite Motions
- BARBARA KAHN STARK ET AL., FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT 369(1998). Modification of Automatic Orders
- FAMILY LAW PRACTICE IN CONNECTICUT, Law Practice Handbooks, Inc. 10-62 (1996). Sample Visitation Order

CASES:

- Foster v. Foster, 84 Conn. App. 311, 320, 853 A.2d 588 (2004). “As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent’s right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all

the interests, the court's refusal to grant a continuance did not result in a constitutional deprivation."

- Roth v. Weston, 259 Conn. 202, 789 A.2d 231 (2002). *Petition for visitation by maternal grandmother and maternal aunt pursuant to Conn. Gen. Stat. § 46b-59.*
"In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an unwarranted intrusion into family autonomy. Accordingly, in the absence of any such requirement of harm, § 46b-59 does not justify interference with parental rights." (229)
"... the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that the denial of the visitation will cause real and significant harm to the child... Second, the petitioner must prove these allegations by clear and convincing evidence." (235)
- Laspina-Williams v. Laspina-Williams, 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). *Petition for visitation rights with the biological child of the defendant; the child was conceived through alternative insemination and had been jointly raised by the plaintiff and defendant who were same-sex partners.*
" ... the defendant allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she is a party entitled to seek visitation with the child."
- Temple v. Meyer, 208 Conn. 404, 544 A.2d 629 (1988).
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). "In this case, the evidence showed ... that the plaintiff's psychological instability was such that it posed a threat to the children's well-being." *Visitation limited to one day per week*
- Raymond v. Raymond, 165 Conn. 735, 742, 345 A.2d 48 (1974). "It has never been our law that support payments were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the right of visitation."

**WEST KEY
NUMBERS:**

- *Child Custody* # 175-231
- *Children out of Wedlock* # 20.9
- *Infants* # 19.3(4)

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS §§ 41.1—41.46, 42.40—42.45 (2000).
- FAMILY LAW PRACTICE IN CONNECTICUT, Law Practice Handbooks,

Inc. §§ 10.37–10.39(1996).

- AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS & RECOMMENDATIONS ch. 2 (2002). *The Allocation of Custodial and Decisionmaking Responsibility for Children*
- 3 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE §§ 16.01–16.14 (2004).
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 3.01–3.15 (2d ed. 1994).

ENCYCLOPEDIAS:

- 59 AM. JUR. 2D *Parent & child* § 36 (1987).
- Robin Cheryl Miller, Annotation, *Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct*, 99 A.L.R. 5th 474 (2002).
- Robin Cheryl Miller, Annotation, *Child Custody and Visitation Rights Arising From Same-Sex Relationship*, 80 A.L.R. 5th 1 (2000).
- Harriet Dinegar Milks, Annotation, *Smoking as Factor in Child Custody and Visitation Cases*, 36 A.L.R. 5th 377 (1996).
- Mary E. Taylor, Annotation, *Parent's Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5th 534 (1994).
- Claudia G. Catalano, Annotation, *Child Custody and Visitation Rights of Person Infected with AIDS*, 86 ALR4th 211 (1991).

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Parent as Guardian

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to parents as guardians of minors in Connecticut

SEE ALSO:

- [Guardianship in Connecticut](#)

DEFINITION:

- **Mother:** "means a woman who can show proof by means of a birth certificate or other sufficient evidence of having given birth to a child and an adoptive mother as shown by a decree of a court of competent jurisdiction or otherwise;" CONN. GEN. STAT. § 45a-604 (2008).
- **Father:** "means a man who is a father under the law of this state including a man who, in accordance with section 46b-172, executes a binding acknowledgment of paternity and a man determined to be a father under chapter 815y;" CONN. GEN. STAT. § 45a-604(2) (2008)
- **Parent:** "means a mother as defined in subdivision (1) of this section or a "father" as defined in subdivision (2) of this section;" CONN. GEN. STAT. § 45a-604(3) (20085).
- **Presumption re best interest of the child to be in custody of parent:** "In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody." CONN. GEN. STAT. §46b-56b (2005).

STATUTES:

- CONN. GEN. STAT. (2008)

Chapter 802h. Protected persons and their property

Part II. Guardians of the person of a minor

§ 45a-605. Provisions construed in best interest of minor child

§ 45a-606. Father and mother joint guardians

§ 45a-609. Application for removal of parent as guardian. Hearing. Notice. Examination

§ 45a-610. Removal of parent as guardian

§ 45a-611. Reinstatement of parent as guardian of the person of minor.

§ 45a-612. Visitation rights of parent removed as guardian.

§ 45a-623. Transfer of proceeding to Superior Court or another judge of probate

§ 45a-624a. Consent of parent required for designation of standby guardian.

Chapter 815j. Dissolution of marriage, legal separation and annulment

§ 46b-56b. Presumption re best interest of child to be in custody of parent

LEGISLATIVE:

- 2000 Conn. Acts 75 (Reg. Sess.), effective October 1, 2000. An act concerning protection of children in Probate Courts. Substitute House Bill No. 5716.
- 1979 Conn. Acts 460 § 4 (Reg. Sess.). An act concerning guardianship of children.

FORMS:

- Probate Court
 - PC-500. Application/Removal of guardian
 - PC-520. Order of notice, temporary custody or removal and appointment of guardian
 - PC-530. Notice/Receipt of application for removal of guardian
 - PC-560. Decree/Removal of guardian and appointment

WEST KEY NUMBERS:

- *Guardian and Ward*
 - # 4. Guardians by nature
 - # 25. Removal of guardian
 - # 26. Death of guardian

DIGESTS:

- DOWLING'S DIGEST: *Guardian and Ward*
 - § 1. In general; Appointment
- CONNECTICUT FAMILY LAW CITATIONS: *Guardian*

COURT CASES

- Doe v. Doe, 244 Conn. 403, 455, 710 A.2d 1297 (1998). "As these authorities make clear, the presumption does not mean that the nonparent must, in order to rebut it, prove that the parent is unfit. It means that the parent has an initial advantage, and that the nonparent must prove facts sufficient to put into issue the presumed fact that it is in the child's best interest to be in the parent's custody. Once those facts are established, however, the

presumption disappears, and the sole touchstone of the child's best interests remains irrespective of the parental or third party status of the adults involved. In that instance, then, neither adult - the parent or the third party - enjoys any advantage or suffers any disadvantage as a result of his or her parental or third party status."

- Bristol v. Brundage, 24 Conn. App. 402, 405, 589 A.2d 1 (1991). This statute [§ 46b-56b] was enacted to counteract the holding of McGaffin v. Roberts [below] . . . which held that 45-43 (now 45a-606) did not create a presumption that a surviving parent is entitled to preference in a custody dispute."
- McGaffin v. Roberts, 193 Conn. 393, 407, 479 A.2d 176 (1984), *cert. denied*, 470 U.S. 1050, 105 S.Ct. 1747, 84 L.Ed. 2d 813 (U.S. 1985). "Thus the factor of parenthood is to be properly considered in the aggregate of all those circumstances that a trial court is entitled to consider in exercising its broad discretion in deciding what is in the best interests of a minor child."
- Posey v. Yandell, 26 Conn. Supp. 320, 323, 222 A.2d 747 (1966). "Upon the death of the mother, the plaintiff became the sole guardian of the child Carolyn. It follows that the plaintiff has a prior right to custody unless the circumstances are such that to give it to him would not be for the best interest of the child."
- Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 659 (1955). "If one parent is in default of his parental obligations, he or she may be deprived of the right to have the care and custody of a minor child, and that right may be conferred upon the other The state is primarily interested in having the status of husband and wife, with joint guardianship of children, maintained. When it is disrupted, the state must exercise its duties as *parens patriae* in the interests of the child."

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
 - § 5. Parents as joint guardians
 - § 6. Rights of father
 - § 7. Rights of mother
 - § 8. Rights of other relatives
 - § 9. Incidents of guardianship by nature
 - § 10. Transfer of guardianship or custody of child
- 39 C.J.S. *Guardian and Ward* (2003).
 - § 4. Classes or kinds of guardians. Natural guardians

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT* 3D (2008).

Chapter 3. Guardianship

II. Guardianships of minors

§ 3.2. Guardianship of minors. Parent and child—
statutory guardians of the person,
custody and control, termination of
parental rights, statutory parent

§ 3:3. —Right to services and earnings, effects of
emancipation

§ 3:4. —Duty to support

§ 3:10. Removal of parents or other guardians of
minor's person, temporary custody
orders, visitation and reinstatement
rights, appointment of guardian or co-
guardian

- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (Rev.2D ed. 2005).

Chapter 2. Child custody

§ 2.15. Preference of the natural parent(s) over
others; generally

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2000).

Chapter 42. Child Custody and Visitation

§ 42.1. Parental custody rights—generally

§ 42.2. Right of unmarried or non-cohabiting
parents

§ 44.19. Death of custodial parent

- PETER L. COSTAS, MANAGING ED., LAWYERS' DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," pp. XVII-26, 28-30.

WEB SITES:

<http://www.jud.state.ct.us/probate/faq.html#GUARDIANSHIPS>

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Section 1.7

Termination of Parental Rights (TPR)

A Guide to Resources in the Law Library

- “The fundamental liberty interest of natural parents in the care, custody, and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention in to ongoing family affairs.” Santorsky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed 2d 599 (1982).
- “When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” Santorsky v. Kramer, 455 U.S. 745, 753-754, 102 S.Ct. 1388, 71 L.Ed 2d 599 (1982).
- “[W]e recognize that ‘the right of parents qua parents to the custody of their children is an important principle that has constitutional dimensions,’ a principle echoed and illuminated in recent years by decisions of the United States Supreme Court and of this court.” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- “Termination of parental rights is a judicial matter of exceptional gravity and sensitivity. Anonymous v. Norton, 168 Conn. 421, 430 362 A.2d 532 (1975). Termination of parental rights is the ultimate interference by the state in the parent-child relationship and, although such judicial action may be required under certain circumstances, the natural rights of the parents in their children ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’ Stanley v. Illinois, 405 U.S. 645, 651 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); In re Juvenile Appeal (Anonymous), 177 Conn. 648, 671 420 A.2d 875 (1979).” In Re Emmanuel M., 43 Conn. Sup. 108, 112, 648 A.2d 904 (1993)

Rights of Parents in TPR

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the rights in general of parents and foster parents in termination of parental rights cases in Connecticut
- DEFINITIONS:**
- **Fourteenth Amendment** to the U.S. Constitution: “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
 - **Due Process:** “freedom of personal choice in matters of . . . family life is one the liberties protected by the Due Process Clause of the Fourteenth Amendment.” Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974).
 - **Equal protection of the laws:** “The guaranty of equal protection of the laws ensures that the laws apply alike to all in the same situation, or that similar treatment is afforded to those in similar circumstances.” In re Nicolina T., 9 Conn. App. 598, 606 (1987).
- STATUTES:**
- CONN. GEN. STAT. (2008).
 - Chapter 319a. Child welfare
 - § 17a-112. Termination of parental rights of child committed to commissioner. Cooperative postadoption agreements. Placement of child from another state. Interstate Compact on the Placement of Children.
 - Chapter 803. Termination of parental rights and adoption
 - § 45a-708. Guardian ad litem for minor or incompetent parent
 - § 45a-715. Petition to terminate parental rights. Cooperative postadoption agreements.
 - § 45a-716. **Hearing on petition to terminate parental rights. Notice. Attorney General as party.**
 - (b) The court shall cause notice of the hearing to be given to the following persons, as applicable . . .
 - (2) the father of any minor child born out of

wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, (B) he has acknowledged in writing that he is the father of such child, (C) he has contributed regularly to the support of such child, (D) his name appears on the birth certificate, (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as the father of the child by the mother; (3) the guardian or any other person whom the court deems appropriate; (4) the Commissioner of Children and Families; and (5) the Attorney General. The Attorney General may file an appearance and shall be and remain a party to the action if the child is receiving or has received aid or care from the state, or if the child is receiving child support enforcement services, as defined in subdivision (2) of subsection (b) of section 46b-231. If the recipient of the notice is a person described in subdivision (1) or (2) of this subsection or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent. The reasonable compensation for such counsel shall be established by, and paid from funds appropriated to, the Judicial Department, except that in the case of a Probate Court matter, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

- § 45a-717. Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination
- (a) At the hearing held on any petition for the termination of parental rights filed in the Court of Probate under section 45a-715, or filed in the Superior Court under section 17a-112, or transferred to the Superior Court from the Court of Probate under section 45a-715, any party to whom notice was given shall have the right to appear and be heard with respect to the petition. If a parent who is consenting to the termination of such parent's parental rights appears at the hearing on the petition for termination of parental rights, the court shall explain to the parent the meaning and consequences of termination of

parental rights. Nothing in this subsection shall be construed to require the appearance of a consenting parent at the hearing regarding the termination of such parent's parental rights except as otherwise provided by court order.

CASES:

- Roth v. Weston, 259 Conn. 202, 231, 789 A.2d 431 (2002). "We recognize that due process requires the clear and convincing test be applied to the termination of parental rights because it is the complete severance by court order of the legal relationship, with all its rights and responsibilities"
- Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection."
- Quilloin v. Walcott, 434 U.S. 646, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). "But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all except appellant."
- Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."
- In re Luke, 40 Conn. Supp. 316, 326-327, 498 A.2d 1054 (1985). "It is the responsibility of all of the adults involved to give the children's interest top priority over their own emotional objectives, so that they may understand and benefit from the fact that they have two 'Daddies' who love them, that having two 'Daddies' is not 'too complicated' but is rather an enriching factor in their lives."

WEST KEY NUMBERS:

- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
- *Infants* # 178. Evidence. Termination of parental rights

DIGESTS:

- *ALR DIGEST: Attorneys* § 35. Right to counsel and consultation
Termination of parental rights
- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*

- US L ED DIGEST: Constitutional Law § 803.5
- ENCYCLOPEDIAS:**
- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—
Presence of person; counsel
 - 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
 - Patricia C. Kussman, Annotation, *Right Of Indigent Parent To Appointed Counsel In Proceeding For Involuntary Termination Of Parental Rights*, 92 ALR5th 379 (2001).
 - Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
 - Joel E. Smith, Annotation, *Right of Indigent Parent to Appointed Counsel In Proceeding For Involuntary Termination of Parental Rights*, 80 ALR3d 1141 (1977)
 - *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997).
§ 24. Presumption and burden of proof
- TEXTS & TREATISES:**
- RALPH H. FOLSOM AND GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTION* 3d (2007).
Chapter 5. Adoption and Parental Rights
§ 5:6. Termination of parental rights and appointment of guardian or statutory parent for adoption petition
§ 5:7. Notice, guardian ad litem
§ 5:8. Hearing, investigation and report, grounds for termination of parental rights, consent termination
 - 1 JOAN HEIFETZ HOLLINGER ET AL., *ADOPTION LAW AND PRACTICE* (2007).
Chapter 2. Consent to adoption
§ 2.10. Exceptions to the requirement of parental consent
§ 2.10[2]. State courts and statutory examples
 - 4 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* (2008).
Chapter 28. Termination of parental rights
§ 28.02. Elements of the proceeding
§ 28.02[2]. Constitutional limitations
§ 28.03. Procedural protections
[1]. Service of process
[2]. Notification of charges
[4]. Counsel for the parents
[5]. Disclosure

- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 13. Termination of Parental Rights
§ 13.18. Unmarried fathers

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
II. Background
E. The federal judiciary and constitutional issues, pp. 294-297

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 3 Rights of the remaining parent in TPR

Rights of the Remaining Parent in TPR	
CONN. GEN. STATS. § 17a-112(i) (2008) (partial)	"Consent for the termination of the parental rights of one parent does not diminish the parental rights of the other parent of the child, nor does it relieve the other parent of the duty to support the child."
CONN. GEN. STATS. § 17a-112(n) (2008) (partial)	"(n) If the parental rights of only one parent are terminated, the remaining parent shall be the sole parent and, unless otherwise provided by law, guardian of the person."
CONN. GEN. STATS. § 45a-717(i) (2008)	"If the parental rights of only one parent are terminated, the remaining parent shall be sole parent and, unless otherwise provided by law, guardian of the person."

Section 1.7b

Right to Counsel

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the right to counsel in termination of parental rights in Connecticut.
- DEFINITIONS:**
- “If a party appears without counsel, the court shall inform such party of the party's right to counsel and upon request, if he or she is unable to pay for counsel, shall appoint counsel to represent such party. No party may waive counsel unless the court has first explained the nature and meaning of a petition for the termination of parental rights.” CONN. GEN. STAT. (2008) § 45a-717(b).
 - “The respondent’s due process rights are therefore properly determined by the balancing test of Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), employed by the United States Supreme Court in considering a parent’s right in termination proceedings to representation by counsel . . . ” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- STATUTES:**
- CONN. GEN. STAT. (2008)
 - Chapter 319a. Child welfare
 - § 17a-112. Termination of parental rights of child committed to commissioner.
 - Chapter 803. Termination of parental rights and adoption
 - § 45a-715. Petition to terminate parental rights. Cooperative postadoption agreements.
 - § 45a-716. **Hearing on petition to terminate parental rights. Notice. Attorney General as party.**
 - (b). . . . If the recipient of the notice is a person described in subdivision (1) or (2) of this subsection or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent.
 - § 45a-717. Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination

§ 45a-719. Reopening judgment terminating parental rights. Best interest of child. Final decree of adoption

- CASES:**
- *In re Alexander V.*, 223 Conn. 557, 566, 613 A.2d 780 (1992). "Accordingly we conclude that due process does not require a competency hearing in all termination cases but only when (1) the parent's attorney requests such a hearing, or (2) in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte."
- WEST KEY NUMBERS:**
- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
 - *Infants* # 178. Evidence. Termination of parental rights
- DIGESTS:**
- *ALR DIGEST: Attorneys* § 35. Right to counsel and consultation
Termination of parental rights
 - CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
 - US L ED DIGEST: Constitutional Law § 803.5
- ENCYCLOPEDIAS:**
- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—
Presence of person; counsel
 - 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
 - Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
 - Joel E. Smith, Annotation, *Right of Indigent Parent to Appointed Counsel In Proceeding For Involuntary Termination of Parental Rights*, 80 ALR3d 1141 (1977).
 - *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997)
- TEXTS & TREATISES:**
- RALPH H. FOLSOM AND GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTION* 3d (2007).
Chapter 5. Adoption and Parental Rights
§ 5:6. Termination of parental rights and appointment of guardian or statutory parent for adoption petition
§ 5:7. Notice, guardian ad litem
§ 5:8. Hearing, investigation and report, grounds for termination of parental rights, consent termination

- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2008).
 Chapter 28. Termination of parental rights
 § 28.03. Procedural protections
 [4]. Counsel for the parents
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
 Chapter 13. Termination of Parental Rights
 § 13.06. Right to counsel

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
 II. Background
 E. The federal judiciary and constitutional issues, pp. 290-291

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Section 1.7c

Standard of Proof

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the standard of proof in termination of parental rights in Connecticut.
- DEFINITIONS:**
- “The constitutional guarantee of due process of law requires that the statutory grounds for termination of parental rights be established by ‘clear and convincing evidence,’ not merely a fair preponderance of the evidence.” In Re Emmanuel, 43 Conn. Supp. 108, 113, 648 A.2d 904 (1994).
 - “The respondent’s due process rights are therefore properly determined by the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), employed by the United States Supreme Court in considering a parent’s right in termination proceedings to representation by counsel . . . and to the use of a clear and convincing standard of proof” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 17a-112. Termination of parental rights of child committed to commissioner. Cooperative postadoption agreements. Placement of child from another state. Interstate Compact on the Placement of Children.
- CASES:**
- In The Interests of Jaisean M., 2002 Ct. Sup. 5787, 5789, 2002 WL 1156030 (May 3, 2002) “*Roth* and *Troxel* have nothing to do with a termination of parental rights case. In fact, the burden of proof in a termination of parental rights case has long been ‘clear and convincing evidence,’ and the requirement that a grandparent seeking visitation overcome a similar burden actually parallels and reaffirms, rather than undermines, the statutory scheme applicable to termination cases.”
 - In re Eden, 250 Conn. 674, 694, 741 A.2d 873 (1999). “The constitutional requirement of proof by clear and convincing evidence applies only to those findings upon which the ultimate decision to terminate parental rights is predicated.”
- WEST KEY NUMBERS:**
- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
 - *Infants* # 178. Evidence. Termination of parental rights

- DIGESTS:**
- *ALR DIGEST*: Attorneys § 35. Right to counsel and consultation
Termination of parental rights
 - CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
 - US L ED DIGEST: Constitutional Law § 803.5
- ENCYCLOPEDIAS:**
- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—
Presence of person; counsel
 - 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
 - Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
 - Joel E. Smith, Annotation, *Right of Indigent Parent to Appointed Counsel In Proceeding For Involuntary Termination of Parental Rights*, 80 ALR3d 1141 (1977).
 - *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997).
§ 24. Presumption and burden of proof
- TEXTS & TREATISES:**
- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
Chapter 13. Termination of Parental Rights
§ 13.03. Standard of proof
 - 1 JOAN HEIFETZ HOLLINGER ET AL., *ADOPTION LAW AND PRACTICE* (2004).
§ 2.10. Exceptions to the requirement of parental consent
[2]. State courts and statutory examples
 - SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* (2008).
Chapter 28. Termination of parental rights
§ 28.04[2]. Burden of proof
- LAW REVIEWS:**
- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
II. Background
E. The federal judiciary and constitutional issues, pp. 293-294
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Department Law

Library, One Court Street, Middletown, CT 06457. (860) 343-6560.

Section **1.7d**

Equal Protection of the Laws

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the constitutional guarantee of equal protection of the laws in termination of parental rights in Connecticut
- DEFINITIONS:**
- “The guaranty of equal protection of the laws ensures that the laws apply alike to all in the same situation, or that similar treatment is afforded to those in similar circumstances.” *In re Nicolina T.*, 9 Conn. App. 598, 606, 520 A.2d 639 (1987).
- CASES:**
- *In re Nicolina T.*, 9 Conn. App. 598, 606, 520 A.2d 639 (1987). “The trial court’s court decision to terminate the respondent’s parental rights was made pursuant to the statutory requirements of General Statutes § 17-43a (b) [now § 17a-112], makes no distinction between mentally ill and other persons. As such, the statutory criteria applies with equal force to all parents without regard to their mental condition.”
- WEST KEY NUMBERS:**
- Constitutional Law #225.1. Equal protection of the laws. Regulations affecting civil rights or personal rights and relations in general.
- DIGESTS:**
- ALR DIGEST: *Termination of parental rights*
 - CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
- ENCYCLOPEDIAS:**
- Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
§§ 5-9. Objections on grounds of discrimination; Equal protection
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Section 1.7e

Notice and Opportunity To Be Heard

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the constitutional guarantee of notice and the opportunity to be heard including determination of parental competency.
- DEFINITIONS:**
- **Mentally incompetent person:** "one who is unable to understand the nature of the termination proceeding and unable to assist in the presentation of his or her case." In re Alexander V., 223 Conn. 557, 563, 613 A.2d 780 (1992).
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 45a-716. **Hearing on petition to terminate parental rights. Notice. Attorney General as party.**
 - (a) Upon receipt of a petition for termination of parental rights, the Court of Probate, or the Superior Court on a case transferred to it from the Court of Probate in accordance with the provisions of subsection (g) of section 45a-715, shall set a time and place for hearing the petition. The time for hearing shall be not more than thirty days after the filing of the petition, except, in the case of a petition for termination of parental rights based on consent that is filed on or after October 1, 2004, the time for hearing shall be not more than twenty days after the filing of such petition.
 - (b) The court shall cause notice of the hearing to be given to the following persons, as applicable: (1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606; (2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, (B) he has acknowledged in writing that he is the father of such child, (C) he has contributed regularly to the support of such child, (D) his name appears on the birth certificate, (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as

the father of the child by the mother; (3) the guardian or any other person whom the court shall deem appropriate; and (4) the Commissioner of Children and Families. If the recipient of the notice is a person described in subdivision (1) or (2) of this subsection or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent. The reasonable compensation for such counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, in the case of a Probate Court matter, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

- (c) The court shall cause notice of the hearing to be given to the following persons, as applicable: (1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606; (2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, (B) he has acknowledged in writing that he is the father of such child, (C) he has contributed regularly to the support of such child, (D) his name appears on the birth certificate, (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as the father of the child by the mother; (3) the guardian or any other person whom the court deems appropriate; (4) the Commissioner of Children and Families; and (5) the Attorney General. The Attorney General may file an appearance and shall be and remain a party to the action if the child is receiving or has received aid or care from the state, or if the child is receiving child support enforcement services, as defined in subdivision (2) of subsection (b) of section 46b-231. If the recipient of the notice is a person described in subdivision (1) or (2) of this subsection or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent. The reasonable compensation for such counsel shall be established by, and paid from funds appropriated to, the Judicial Department, except that in the case of a Probate Court

matter, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.

(d) In any proceeding pending in the Court of Probate, in lieu of personal service on, or at the usual place of abode of, a parent or the father of a child born out of wedlock who is either a petitioner or who signs under penalty of false statement a written waiver of personal service on a form provided by the Probate Court Administrator, the court may order notice to be given by first class mail at least ten days before the date of the hearing. If such delivery cannot reasonably be effected, or if the whereabouts of the parents is unknown, notice shall be ordered to be given by publication as provided in subsection (c) of this section.

§ 45a-717. Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination

(a) At the hearing held on any petition for the termination of parental rights . . . any party to whom notice was given shall have the right to appear and be heard with respect to the petition.

CASES:

- In re Alexander V., 223 Conn. 557, 566, 613 A.2d 780 (1992). "Accordingly we conclude that due process does not require a competency hearing in all termination cases but only when (1) the parent's attorney requests such a hearing, or (2) in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte."

WEST KEY NUMBERS:

- CONSTITUTIONAL LAW # 274. Deprivation of personal rights in general. Privacy (5). Privacy; marriage, family and sexual matters
- MENTAL HEALTH # 472. Capacity to sue and be sued

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*

TEXTS & TREATISES:

- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
Chapter 13. Termination of Parental Rights
§ 13.04. Standing
§ 13.05. Service of process
- 1 JOAN HEIFETZ HOLLINGER ET AL., *ADOPTION LAW AND PRACTICE* (2008).

§ 2.10[2]. State courts and statutory examples

- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2008).
 - Chapter 28. Termination of parental rights
 - § 28.03. Procedural protections
 - [1]. Service of process
 - [2]. Notification of charges
 - § 28.04[5]. Right to be physically present

COMPILER:

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Section 1.8

Adoption of Child

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to adoption by relative in Connecticut including father who live separately and the child's grandparents
- DEFINITION:**
- **Relative:** "shall include, but not be limited to, a person who has been adjudged by a court of competent jurisdiction to be the father of a child born out of wedlock, or who has acknowledged his paternity under the provisions of section 46b-172a, with further relationship to the child determined through the father." CONN. GEN. STAT. § 45a-707(6) (2008).
 - **Relative:** "shall include, but not be limited to, a person who has been adjudged by a court of competent jurisdiction to be the father of a child born out of wedlock, or who has acknowledged his paternity under the provisions of section 46b-172a, with further relationship to the child determined through the father." CONN. GEN. STAT. § 45a-724(a)(4) (2008).
- STATUTES:**
- CONN. GEN. STAT. (2008)
 - § 45a-724 (a)(3) and (b). Who may give child in adoption
 - § 45a-725. When child free for adoption
 - § 45a-727. Application and agreement of adoption. Investigation, report, assessment of fees. Hearings and decrees.
- LEGISLATIVE:**
- LAWRENCE K. FURBISH, BACKGROUND ON ADOPTION, Connecticut General Assembly, Office of Legislative Research Report 94-R-703 (December 5, 1994).
- FORMS:**
- Probate Court Forms
 - PC-603. Application/Adoption
 - PC-610. Affidavit/ Temporary Custody, Removal, Termination or Adoption
 - PC-681. Agreement of Adoption
- CASES:**
- Mullins v. Oregon, 57 F.3d 789 (9th Circuit 1995). *Constitutional rights of grandparents.*
 - Lehr v. Robertson, 463 U.S. 248, 77 Led 2d 614 (1983). *Unwed father*

DIGESTS:

- WEST KEY NUMBER: *Adoption*
- DOWLING'S DIGEST *Adoption*
- CONNECTICUT FAMILY LAW CITATIONS *Adoption*

ENCYCLOPEDIA

S:

- 2 AM. JUR. 2D *Adoption* (1994).
 - § 17. Persons who may adopt. Other blood relatives
 - § 22. Persons who may be adopted. Blood relatives; natural children
- 2 C.J.S. *Adoption of Persons* (1972).
 - §§ 13-17. Persons who may adopt
 - §§ 18-24. Persons who may be adopted

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3d (2004).
 - Chapter 5. Adoption and parental rights
 - § 5.4. Who may give minors in adoption
- Dianne E. Yamin, Hon., *Adoption: Law and Practice, in CONNECTICUT LAWYERS' DESKBOOK: A REFERENCE MANUAL, XVIII-1 to XVIII-16* (Peter L. Costas, managing ed., 1998).
 - "Relative adoption," p. XVIII-8
- 6 ARNOLD H. RUTKIN, GEN. ED., FAMILY LAW AND PRACTICE (2008).
 - Chapter 64. Adoption law, procedure and practice
 - § 64.07. Who may adopt
 - § 64.08. Who may be adopted
- 1 THOMAS A. JACOBS, CHILDREN AND THE LAW: RIGHTS & OBLIGATIONS (1995).
 - Chapter 4. Adoption
 - § 4:08. Who may adopt
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (2d Ed. 1993).
 - Chapter 14. Adoption
 - § 14.06. Unmarried fathers
 - § 14.07. Unnamed fathers
 - § 14.09. Rights of grandparents

LAW REVIEWS:

- Richard Hoffman, Note, *Grudging And Crabbed Approach To Due Process For The Unwed Father*, 16 CONNECTICUT LAW REVIEW 571 (1984).
- Deborah L. Forman, *Unwed Fathers and Adoption: A Theoretical Analysis in Context*, 72 TEXAS LAW REVIEW 967 (1994). [Available at the Law Library at Norwich]

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Cohabitation Law in Connecticut

A Guide to Resources in the Law Library

- “Cohabitation is a dwelling together of man and woman in the same place in the manner of husband and wife.” Wolk v. Wolk, 191 Conn. 328, 332, 464 A.2d 780 (1983).
- “As is readily apparent, the word is not inflexible nor is it one of strict or narrow meaning.” DeMaria v. DeMaria, 247 Conn. 715, 720, 724 A.2d 1088 (1999).
- “In support of his first argument, the plaintiff cites the definition, adopted by our Supreme Court in *Wolk v. Wolk*, 191 Conn. 328, 332, 464 A.2d 780 (1983), that ‘[c]ohabitation is a dwelling together of man and woman in the same place in the manner of husband and wife.’ The plaintiff apparently interprets the phrase ‘in the manner of husband and wife’ to suggest that cohabitation is for all intents and purposes synonymous with marriage, and that cohabitation raises all of the same presumptions regarding the treatment of assets as does marriage. Such an interpretation, however, would essentially transform cohabitation into common-law marriage, contrary to the refusal of this state to recognize such relationships. See *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973) (‘[a]lthough other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status’ [citations omitted]). ‘[C]ohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties.’ *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).” Herring v. Daniels, 70 Conn. App. 649, 655, 805 A.2d 718 (2002).
- “Connecticut does not presently recognize, as valid marriages, living arrangements or informal commitments entered into in this state and loosely categorized as common law marriages. *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973); *Hames v. Hames*, 163 Conn. 588, 593, 316 A.2d 379 (1972); *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). Only recently this rule of law has been reaffirmed. “In this jurisdiction, common law marriages are not accorded validity. . . . The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship.” (Citations omitted.) *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).” Collier v. Milford, 206 Conn. 242, 248, 537 A.2d 474 (1988).

See also:

Chapter 3 Cohabitation agreements in Connecticut

Section 2.1

Cohabitation Without Marriage or Civil Union

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the legal effect of cohabitation on persons not married or parties to a civil union—including contracts and agreements between them, child custody and visitation, and property rights.
- SEE ALSO:**
- [Cohabitation agreements in Connecticut](#)
- DEFINITIONS:**
- “We agree with the trial referee that cohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties. In this jurisdiction, common law marriages are not accorded validity The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity.” *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).
 - Loughlin v. Loughlin, 93 Conn. App. 618, 628-629, 889 A.2d 902 (2006). “With respect to the effect of cohabitation by those who hold themselves out as husband and wife, the law of this jurisdiction is clear. ‘Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status.’ (Citations omitted.) *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973); see also *Hames v. Hames*, supra, 163 Conn. 592-93, 597; *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). ‘The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship.’ *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 53a-67(b). Cohabitation as affirmative defense in certain criminal sexual offenses.

COURT CASES:

- Stern v. Stern, No. FA 07-4106232 S (Conn. Super. Ct. Feb. 11, 2008 J.D. New London at Norwich). “The marriage is nine years in length. Plaintiff’s request that the several years of cohabitation between the parties which preceded their nuptials be considered cannot be accommodated either for awarding alimony or for property distribution purposes; as our supreme court has directed, ‘ . . . given Connecticut’s policy of drawing a clear distinction between marriage and cohabitation, and of awarding greater rights and protections to persons who make the formal legal commitment of marriage, ‘it would be incongruous to conclude that a court, when entertaining financial orders pursuant to §§ 46b-81 and 46b-82, may take into account a period of premarital cohabitation as an additional equitable consideration . . . ,”
- “Loughlin v. Loughlin, 280 Conn. 632, 910 A.2d 963 (2006) makes it very clear that when the Court considers the ‘length of the marriage’ criterion prescribed in the statutes as they relate to alimony and distribution of the parties’ estates, it cannot consider cohabitation preceding the marriage.”
- Brownell v. Brownell, No. FA 06 401 73 48 S (J.D. Fairfield at Bridgeport, May 3, 2007)
- Weicker v. Granatowski, No. 398167 (Conn. Super. Ct., Bridgeport, Sep. 2, 2003). 35 CONN. L. RPTR. 333 (September 29, 2003). “What is left is that the parties carried on a platonic relationship while living in the Guilford home for two years; the defendant paid primarily all of the expenses, with the plaintiff contributing only furniture and food supplies. From the evidence presented, the court does not find probable cause that the parties expressly or implicitly agreed that the plaintiff would have an interest in the Guilford property, nor can the court divine an equitable basis for such an interest. Even if the court were to find that the parties carried on a romantic relationship while in the Guilford home, as observed supra, “cohabitation alone does not create any contractual relationship or . . . impose other legal duties upon the parties.”
- Boland v. Catalano, . . . 202 Conn.[333,] 339.
- Herring v. Daniels, 70 Conn. App. 649, 656 (2002). “Rather, where the parties have established an unmarried, cohabiting relationship, it is the specific conduct of the parties within that relationship that determines their respective rights and obligations, including the treatment of their individual property Any such finding must be determined by reference to the unique circumstances and arrangements between the parties present in each case. Those matters are questions of fact that are within the singular province of the trial court, and can only be determined by evaluating the credibility of the witnesses and weighing conflicting evidence.”
- Boland v. Catalano, 202 Conn. 333, 339, 521 A.2d 142 (1987). “Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity.”
- Burns v. Koellmer, 11 Conn. App. 375, 381, 527 A.2d 1210 (1987). “Thus, a contract, express or implied, or some other tacit understanding between the parties who are not married to one another which does not rely upon their sexual behavior is enforceable in the courts of this state.”
- Gallo v. Gallo, 184 Conn. 36, 45, 440 A.2d 782 (1981). “ The testimony before the trial court concerned only the woman with whom the defendant was cohabiting at the time of the hearing. Thus there is no basis in the evidence for the trial court to extend the restriction to any other woman. The judgment must be modified so that the overnight visitation restriction applies only to the particular woman who was living with the defendant at the time of the hearing.”

COURT CASES:
(Other states)

- Marvin v. Marvin, 557 P.2d 106 (1976). California.
- Beal v. Beal, 577 P2d 507(1978). Oregon.

DIGESTS:

- CYNTHIA C. GEORGE AND THOMAS D. COLIN. CONNECTICUT FAMILY LAW CITATIONS: Cohabitation

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
Chapter 42. Child Custody and Visitation
§ 42.2 Rights of unmarried or non-cohabiting parents
- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
Chapter 47. Property rights and agreements between unmarried cohabitants
§ 47.1. In general
§ 47.3. Validity
§ 47.6. Separate property
§ 47.7. Joint purchases and contracts
§ 47.8. Enforcement of cohabitation agreements
§ 47.9. Termination of living together arrangements
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2007).
Chapter 65. Unmarried Cohabitants
§ 65.02. Unmarried cohabitants and the courts
§ 65.03. Issues facing unmarried cohabitants
[1]. Support (Alimony or maintenance)
[a]. In general
[b]. Post-divorce cohabitation as support determinant
[2]. Children and legitimacy
[3]. Custody and visitation
[a]. “Adverse Effect” standard
[b]. Psychological parent’s status
[c]. Post-Divorce cohabitation as a custody determinant
[4]. Child support
[5]. Adoption
[6]. Inheritance
[7]. Taxes
[8]. Cohabitants rights vis-à-vis third parties
[a]. Loss of consortium
[b]. Credit
[c]. Other rights and benefits
[i]. Landlord-tenant anti-discrimination laws
[ii]. Single-family zoning ordinances
[iii]. Insurance coverage
[iv]. Workers’ compensation and employer health insurance benefits
[v]. Homestead statutes
[vi]. Medical benefits
[9]. Criminal statutes restricting cohabitants’ acts
- SAMUEL GREEN AND JOHN V. LONG. MARRIAGE AND FAMILY LAW AGREEMENTS (2d ed. 1984).
Chapter 3. Cohabitation
- TONI IHARA ET AL. THE LIVING TOGETHER KIT: A LEGAL GUIDE FOR UNMARRIED COUPLES (12th ed. 2004).

- Chapter 1. Living together: An introduction
- Chapter 2. The legal state of living together
- Chapter 3. Living together agreements: Why and how
 - A. Ten tips for writing a living together agreement
 - B. Property agreements
 - C. Agreement to share ownership of a joint purchase
 - D. Agreement covering joint projects
 - E. Agreement covering homemaker services
 - F. Agreement for artists and inventors
 - G. Agreement for people in school
 - H. Agreement to protect person who moves a long distance or gives up a job
- Chapter 4. Debt, credit, taxes, and more: Practical aspects of living together
- Chapter 5. Renting and sharing a home
- Chapter 6. Buying a house together
- Chapter 7. Starting a family
- Chapter 8. You and your ex-spouse and children from a prior relationship
- Chapter 9. Wills and estate planning
- Chapter 10. Moving on—When unmarried couples separate
- Chapter 11. Lawyers and legal research
- GRAHAM DOUTHWAITE. *UNMARRIED COUPLES AND THE LAW* (1979).
 - Chapter 2. Ramifications of the unmarried status
 - Chapter 3. Status of children of relationship
 - Chapter 4. Rights to accumulated property and value of services rendered during cohabitation
 - Chapter 6. State-by-state commentary
 - § 6.7. Connecticut

PERIODICALS

- Dianne S. Burden, *Remarriage Vs. Cohabitation: Tradition Doesn't Always Make Sense*, 12 CONNECTICUT FAMILY LAW JOURNAL 4 (1993).
- Rebecca Melton Rosubsky, *Legal Rights Of Unmarried Heterosexual And Homosexual Couples*, 10 CONNECTICUT FAMILY LAW JOURNAL 8 (1991).
- Edith F. McClure, *Marvin Revisited: A Comment On Boland V. Catalano*, 5 CONNECTICUT FAMILY LAW JOURNAL 51 (1987).

ENCYCLOPEDIAS

- 46 AM. JUR. 2d *Joint Ventures* (2006).
 - § 53. Effect of marital relationship or unmarried cohabitation.
- 59A AM. JUR. 2d *Partnerships* (2003).
 - § 204. Unmarried coinhabitants of opposite sex as partners
- see [Table 1: ALR Annotations on Cohabitation without marriage](#)
- *Child Custody And Visitation Rights As Affected By Sexual Lifestyle Of Parents*, 3 PREPARATION FOR SETTLEMENT AND TRIAL 659 (1986).
- *Cause Of Action By Unmarried Cohabitant To Enforce Agreement Or Understanding Regarding Support Or Division Of Property*, 8 COA 2d 1 (1995).

COMPILER

Compiled by Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Branch Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 4 Unreported Connecticut decisions on cohabitation without marriage

<h2 style="margin: 0;">Unreported Connecticut Decisions: Cohabitation without Marriage</h2>	
<p><u>Cheiken v. Greneman-Cheiken</u>, No. FA 03 0733308 (Aug. 24, 2004)</p>	<p>“ . . .the defendant filed a three-count cross complaint. Count one of the cross complaint mirrors plaintiff’s complaint with the added claim that ‘[f]or a period of approximately seven years prior to their marriage, the plaintiff and defendant lived together as a family unit and to all intents and purposes as husband and wife’; count two alleges an express or implied promise during the period of premarital cohabitation; count three alleges unjust enrichment during the same period.”</p> <p style="text-align: center;">*****</p> <p>“The parties agree and this court concurs that the defendant should not have ‘two bites of the apple’ - in other words, the contributions during the cohabitation period should not be considered during division of the property pursuant to the marriage dissolution and also under separate claims for unjust enrichment and breach of promise. The trial court may consider the period of cohabitation during which the defendant allegedly made substantial contributions to the success of the plaintiff’s business operations either under breach of promise and unjust enrichment claims; or, the trial court may take it into account in a dissolution proceeding which considers the entire estate of each party, including the plaintiff’s business operations, as well as the contribution of each in the acquisition or appreciation in value of their respective estates.”</p>
<p><u>Rosengarten v. Downes</u>, 71 Conn. App. 372, 393, 802 A.2d 170 (2002).</p>	<p>“Finally, the plaintiff relies on <i>Boland v. Catalano</i>, 202 Conn. 333, 521 A.2d 142 (1987), in support of his argument that Connecticut recognizes nontraditional relationships and affords the parties to such relationships a judicial remedy for the dissolution of those relationships. Specifically, he argues that under <i>Boland</i> this court can offer dissolution relief to the parties of this civil union under the theory that the partners to the union entered into an express contract, the terms of which are defined by § 1201 et seq. of title 15 of the Vermont Statutes Annotated. We disagree for the reasons already stated and because the plaintiff did not plead any express or implied contract to share earnings or assets.”</p>
<p><u>Champoux v. Porter</u>, No. CV 98 0057585 S (Dec. 2, 1998), 23 Conn. L. Repr. No. 6,219 (January 4, 1999), 1998 Ct. Sup. 14572, 1998 WL 867270 (Conn. Super. 1998).</p>	<p>In the present case, the court finds that no agreement or understanding existed between the parties that each would accrue individual credit for each contribution made to buy and keep the home to be applied to the proceeds resulting from a future sale. Every sum used for these purposes was a gift to the other as a joint owner so that any disparity in amount contributed is immaterial.</p>

[Cont’d}

Unreported cases: Cohabitation without Marriage [cont'd]

Vibert v. Atchley, No. CV93-0346622 (May 23, 1996), 16 Conn. L. Repr. No. 19, 604 (July 8, 1996), 1996 Ct. Sup. 4332-JJJJ Page 4125, 1996 WL 364777 (Conn. Super. 1996).

Accordingly, because Connecticut does not recognize common law marriage and cohabitation alone does not create any contractual relationship or give rise to any other rights and obligations that attend to a valid marriage, such as the continuing duty to support upon which an award of alimony is primarily based, no right to palimony exists under Connecticut law.

Nevertheless, "[o]rdinary contract principles are not suspended . . . for unmarried persons living together, whether or not they engage in sexual activity. Contracts expressly providing for the performance of sexual acts, of course, have been characterized as meretricious and held unenforceable as violative of public policy." Boland v. Catalano, supra, 202 Conn. [333,]339. "[T]he courts should enforce express contracts between nonmarital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services. . . . In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case." Boland v. Catalano, supra, 202 Conn. 340-41, quoting Marvin v. Marvin, 18 Cal.3d 660, 665, 557 P.2d 106, 134 Cal. Rptr. 815 (1976). "Thus, a contract, express or implied, or some other tacit understanding between persons who are not married to one another which does not rely upon their sexual behavior is enforceable in the courts of this state." Burns v. Koellmer, 11 Conn. App. 375, 381, 527 A.2d 1210 (1987).

Based on the foregoing, the plaintiff and the defendant entered into an enforceable contract when the defendant signed their June 13, 1991 agreement.

Table 5 ALR annotations on cohabitation without marriage

<h2 style="margin: 0;">ALR Annotations:</h2> <h3 style="margin: 0;">Cohabitation without Marriage</h3>		
Subject	Title of Annotation	Citation
Automobile Insurance	<ul style="list-style-type: none"> • Annotation, <i>Who Is A "Spouse" Within Clause Of Automobile Liability, Uninsured Motorist, Or No-Fault Insurance Policy Defining Additional Insured</i> 	36 ALR4th 588 (1985)
Children	<ul style="list-style-type: none"> • Alan Stephens, Annotation, <i>Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Or Mother When Child Was Conceived Or Born</i> 	84 ALR4th 655 (1991)
Child Support	<ul style="list-style-type: none"> • Alice M. Wright, Annotation, <i>Right To Credit On Child Support Arrearages For Time Parties Resided Together After Separation Or Divorce</i> 	104 ALR5th 605 (2002)
Contracts	<ul style="list-style-type: none"> • Jean E. Maess, Annotation, <i>Order Awarding Temporary Support Or Living Expenses Upon Separation Of Unmarried Partners Pending Contract Action Based Upon Services Relating To Personal Relationship</i> • Jane Massey Draper, Annotation, <i>Recovery For Services Rendered By Persons Living In Apparent Relation Of Husband And Wife Without Express Agreement For Compensation</i> 	35 ALR4th 409 (1985) 94 ALR3d 552 (1979)
Domestic Violence	<ul style="list-style-type: none"> • Elizabeth Trainor, Annotation, <i>"Cohabitation" For Purposes Of Domestic Violence Statutes</i> 	71 ALR5th 285 (1999)
Housing	<ul style="list-style-type: none"> • Carroll J. Miller, Annotation, <i>What Constitutes Illegal Discrimination Under State Statutory Prohibition Against Discrimination In Housing Accommodations On Account Of Marital Status</i> 	33 ALR4th 964 (1984)
Palimony	<ul style="list-style-type: none"> • William H. Danne, Annotation, <i>"Palimony" Actions for support following termination of nonmarital relationships</i>, 21 ALR6th 351 (2007). 	
Privileged communication	<ul style="list-style-type: none"> • Annotation, <i>Communication Between Unmarried Couple Living Together As Privileged</i> 	4 ALR4th 422 (1981)
		[cont'd]

ALR Annotations: Cohabitation without marriage (cont'd)

Subject	Title of Annotation	Citation
Property	<ul style="list-style-type: none"> • George L. Blum, Annotation, <i>Property Rights Arising From Relationship Of Couple Cohabiting Without Marriage</i> • Wendy Evans Lehmann, Annotation, <i>Estate Created By Deed To Persons Described As Husband And Wife But Not Legally Married</i> 	<p>69 ALR5th 219 (1999)</p> <p>9 ALR4th 1189 (1981)</p>
Tort	<ul style="list-style-type: none"> • Sonja A. Soehnel, Annotation, <i>Action For Loss Of Consortium Based On Nonmarital Cohabitation</i> • Charles Plovnich, Annotation, <i>Recovery For Loss Of Consortium For Injury Occurring Prior To Marriage</i> 	<p>40 ALR4th 553 (1985)</p> <p>5 ALR4th 300 (1981)</p>
Zoning	<ul style="list-style-type: none"> • Vitauts M. Gulbis, Annotation, <i>Validity Of Ordinance Restricting Number Of Unrelated Persons Who Can Live Together In Residential Zoning</i> 	<p>12 ALR4th 238 (1982)</p>

During Divorce

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the effect on alimony, custody and visitation of a spouse's cohabitation while a divorce action is pending.
- DEFINITIONS:**
- “The defendant claims first that, in fashioning its financial orders, the court improperly relied on the total length of the parties' relationship rather than on the length of their second marriage only, in violation of [Conn. Gen. Stats §§ 46b-81 and 46b-82. We agree.” Loughlin v. Loughlin, 93 Conn. App. 618, 625, 889 A.2d 902 (2006).
 - “While alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse's conduct on the other spouse. Because in making its assignment of property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result. McPhee v. MCPhee, 186 Conn. 167, 177, 440 A.2d 274 (1982).” Robinson v. Robinson, 187 Conn. 70, 72, 444 A.2d 234 (1982).
- STATUTES:**
- CONN. GEN. STAT. (2008)
 - § 46b-40 Grounds for dissolution of marriage; legal separation; annulment
 - (c) (3) adultery
 - (c) (8) intolerable cruelty
 - § 53a-81 Adultery: Class A Misdemeanor.
 - REPEALED.** P.A. 91-19 §2 (effective Oct. 1, 1991)
- LEGISLATIVE HISTORIES:**
- 1991 CONN. ACTS 19. An act concerning adultery. Substitute House Bill No. 5082.
- CASES:**
- Makoski v. Makoski, No. FA04 041 26 17S (Conn. Super. Ct., J.D. Fairfield at Bridgeport, May 12, 2005). “While the wife candidly admits a sexual relationship outside of the marriage during the latter months of the marriage the marriage had broken down a long time prior thereto. The husband is primarily responsible for the breakdown of the marriage and the plaintiff shall prevail on her complaint based on irretrievable breakdown. The defendant's counter-claim alleging desertion and adultery are stricken in that they are not the cause of the marital breakdown.”
 - Venuti v. Venuti, 185 Conn. 156, 159, 440 A.2d 878 (1981). “A review of the record shows that the trial court did not err in finding that adultery was not the cause of the breakdown of the marriage. There is, therefore, no basis in the statutes for the trial court to have considered any adultery by the plaintiff in making its award of alimony and counsel fees and the trial court did not abuse its discretion when it made those awards.”
 - Robinson v. Robinson, 187 Conn. 70, 72, 444 A.2d 234 (1982). “While

alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse's conduct on the other spouse. Because in making its assignment of property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result.

WEST KEY NUMBERS:

- Husband and Wife # 279
- Divorce # 245

DIGESTS:

- CYNTHIA C. GEORGE AND THOMAS D. COLIN. CONNECTICUT FAMILY LAW CITATIONS: Cohabitation

ENCYCLOPEDIAS:

- See [Table 5: ALR Annotations: Cohabitation During Divorce](#)

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000). .
Chapter 33 Alimony in general
§ 33.2 Award to either spouse.
[Discussion of the effect of adultery on alimony award]
§ 33.6. Causes for the dissolution
[Issue of fault in awarding alimony]
§ 33.17 Other factors considered
[Extra-marital affair]
Chapter 42 Child custody and visitation
§ 42.31 Causes for dissolution
§ 43.34 Other parental misconduct
[Adulterous relationship]

LAW REVIEWS:

- Paul Smith, *Jurisprudence And Adultery In Modern Day Connecticut*, 3 CONNECTICUT FAMILY LAW JOURNAL 1 (November 1984).
“What do you tell your clients when they ask what they can do socially after commencing a dissolution action.”

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Table 6 ALR annotations on cohabitation during divorce

ALR Annotations: Cohabitation During Divorce	
Subject	Title of Annotation
Adultery	<ul style="list-style-type: none"> • Annotation, <i>Cohabitation Under Marriage Contracted After Divorce Decree As Adultery, Where Decree Later Reversed Or Set Aside</i>, 63 ALR2d 816 (1959)
Alimony	<ul style="list-style-type: none"> • Robin Cheryl Miller, Annotation, <i>Effect Of Same-Sex Relationship On Right To Spousal Support</i>, 73 ALR5th 599 (1999). • Kristine Cordier Karnezis, Annotation, <i>Adulterous Wife's Right To Permanent Alimony</i>, 86 ALR3d 97 (1978)
Children	<ul style="list-style-type: none"> • Robin Cheryl Miller, Annotation, <i>Child Custody And Visitation Rights Arising From Same-Sex Relationship</i>, 80 ALR5th 1 (2000) • Diane M. Allen, Annotation, <i>Propriety Of Provision Of Custody Or Visitation Order Designed To Insulate Child From Parent's Extramarital Sexual Relationships</i>, 40 ALR4th 812 (1985)
Inheritance	<ul style="list-style-type: none"> • Gregory G. Sarno, Annotation, <i>Rights In Decedent's Estate As Between Lawful And Putative Spouses</i>, 81 ALR3d 453 (1980).

Table 7 Unreported Connecticut decisions on adultery during divorce

Unreported Connecticut Decisions: Adultery During Divorce	
<p><u>Morson v. Morson</u>, No. FA99 0175656 S (Sep. 13, 2001), 2001 Ct. Sup. 12743, 2001 WL 1200315.</p>	<p>The parties' final separation occurred on November 17, 1999 when, after requesting a divorce, the defendant left the home. The court finds that the defendant's one act of adultery prior to the final separation did not contribute to the marriage breakdown which was total prior to that episode, <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981).</p>
<p><u>Marchiano v. Marchiano</u>, No. FA96 0156039 S (Nov. 28, 1997), 1997 Ct. Sup. 11568, 11569, 1997 WL 753406.</p>	<p>The causes of the marriage breakdown are found rooted in a generalized incompatibility of life style. The marriage was irretrievably broken down by the summer of 1996. Each party has behaved as an unmarried person since then, 185 <u>Venuti v. Venuti</u>, 156 Conn. The court concludes that fault is not to be assigned to either party.</p>
<p><u>Blackburn v. Blackburn</u>, No. FA95 0144698 S (Nov. 6, 1997), 1997 Ct. Sup. 12093, 12095, 1997 WL 724499.</p>	<p>In April, 1996, the defendant returned to the marital home at 2:00 a.m. to find the plaintiff with a man who the defendant assaulted. Since this episode occurred one year after this dissolution suit was commenced, the court finds such evidence not relevant to the causes of the marriage breakdown, <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981).</p>
<p><u>Fischer v. Fischer</u>, 45 Conn. Sup. 94, 96, 700 A.2d 123 (1995)</p>	<p>“The breakdown of the marriage began in 1981 when the defendant began seeing another woman. This relationship ripened into a long term liaison that continued until the trial of the present case. For her part, the plaintiff admitted committing adultery with a house guest who stayed at the family home between August and November of 1982. Since the breakdown of the marriage was complete by the time the separation agreement was executed, the plaintiff's behavior after June, 1982, did not contribute to the breakdown. <u>Venuti v. Venuti</u>, 185 Conn. 156, 158-59, 440 A.2d 878 (1981). The defendant's behavior is found to be the prime cause for the breakdown.”</p>
<p><u>Paul v. Paul</u>, No. FA93 0117672 S (Sep. 29, 1994), 1994 Ct. Sup. 9738, 9741-9742, 1994 WL 564051.</p>	<p>Regarding the defendant's adultery as impacting on the custody issue, it is correct that a party's morals as demonstrated by conduct may be considered by the court. <u>Adams v. Adams</u>, 180 Conn. 498; <u>Sullivan v. Sullivan</u>, 141 Conn. 235. The plaintiff's living with Mrs. Goodwin occurred after the breakdown and is not considered as bearing on fault. <u>Venuti v. Venuti</u>, 185 Conn. 156. The court can consider the behavior of each party to the time of trial in determining how each party's behavior may impact the child, for the question is not who was the better custodian in the past, but which party is the better custodian now. <u>Yontel v. Yontel</u>, 185 Conn. 275, 283.</p>

Unreported Connecticut Decisions: Adultery During Divorce

<p><u>Buechele v. Buechele</u>, No. 32 54 02 (May 26, 1993), 1993 Ct. Sup. 5251, 5254, 1993 WL 190426.</p>	<p>In <u>Venuti v. Venuti</u>, 185 Conn. 156, 159 (1981), the court stated in part as follows:</p> <p style="padding-left: 40px;">"A review of the record shows that the trial court did not err in finding that adultery was not the cause of the breakdown of the marriage. There is, therefore, no basis in the statutes for the trial court to have considered any adultery by the plaintiff in making its award of alimony and counsel fees. . . ."</p> <p>The court finds that the defendant's involvement with a third party and her existing pregnancy is not a factor in the cause of the breakdown of the marriage.</p>
<p><u>Mason v. Mason</u>, No. 30 06 62 (Nov. 8, 1991), 1991 Ct. Sup. 9485, 9490-91, 1991 WL 240727.</p>	<p>In <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981), our Supreme Court considered the questions of awarding alimony and counsel fees to an adulterous spouse. The Court noted on pages 157 and 158 that, under the dissolution statute, adultery is one of ten causes for granting a dissolution but a trial court may dissolve a marriage with irretrievable breakdown as the basis even though another cause is proven. Also that adultery is not listed as a factor in General Statutes 46b-62, 46b-82 to be considered in making an award unless it is one of causes of the dissolution; and further that, as a cause, it is only a factor to consider together with all the other factors enumerated in the General Statutes; and concluding on page 148 with the following:</p> <p style="padding-left: 40px;">"Thus, there is no longer a foundation for the claim that as a matter of law it is an abuse of discretion to award alimony and counsel fees to an adulterous spouse."</p> <p>In the Venuti case the trial court found that the adultery was not a cause of the breakdown.</p>
<p><u>Foley v. Foley</u>, No. FA-89-292125 (Apr. 10, 1991), 1991 Ct. Sup. 3105, 3106-3107, 1991 WL 61184.</p>	<p>The court does not find that adultery was the cause of the breakdown of this marriage. There is, therefore, no basis in the statutes and case law for this court to have considered any adultery by the plaintiff in making any award of alimony, etc., <u>Venuti v. Venuti</u>, 185 Conn. 159. Adultery will not be inferred from circumstantial evidence, unless there is both an opportunity and an adulterous disposition. <u>Eberhard v. Eberhard</u>, 4 N.J. 535 (1950). Moreover, the existence of both the opportunity and the inclination without more does not necessarily compel a conclusion that adultery has occurred. <u>Antonata v. Antonata</u>, 85 Conn. 390 (1912).</p>

Following Divorce

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the effect on alimony, custody and visitation of cohabitation after a divorce is final.
- DEFINITIONS:**
- **Cohabitation vs. living together:** “Section 46b-86 (b) does not use the word cohabitation. The legislature instead ‘chose the broader language of ‘living with another person’ rather than ‘cohabitation’. . . .’ Because, however, ‘living with another’ person without financial benefit did not establish sufficient reason to refashion an award of alimony under General Statutes § 46b-81, the legislature imposed the additional requirement that the party making alimony payments prove that the living arrangement has resulted in a change in circumstances that alters the financial needs of the alimony recipient. Therefore, this additional requirement, in effect, serves as a limitation. Pursuant to § 46b-86 (b), the nonmarital union must be one with attendant financial consequences before the trial court may alter an award of alimony.” *DeMaria v. DeMaria*, 247 Conn. 715, 720, 724 A.2d 1088 (1999).
 - **COHABITATION STATUTE:** General Statutes 46b-86(b) is the so-called ‘cohabitation’ statute, which was enacted four years after 36b-86(a) to ‘correct the injustice of making a party pay alimony when his or her ex-spouse is living with a person of the opposite sex, without marrying, to prevent the loss of support.’ H.B. No. 6174, 1977 Sess. (Statement of Purpose). Under 46b-86(b), ‘the superior court may, in its discretion and upon notice and hearing . . . suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person’ and that this arrangement has caused ‘a change of circumstances’ which ‘alter(s) the financial Needs’ of the alimony recipient. (Emphasis added.) As we have noted, the provision places the burden of proof on the party moving for such a modification.” *Silber v. Silber*, No. FST FA 94 0142065 S (J.D. Stamford-Norwalk at Stamford, Dec. 31, 2007)
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 46b-86(b). Modification of alimony or support orders and judgments.
- LEGISLATIVE HISTORIES:**
- P.A. 77-394. The "cohabitation" statute. H.B. No. 6174 (1977 Session).
- FORMS:**
- *Motion for modification of alimony based on cohabitation—Form, 8* ARNOLD H. RUTKIN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000) § 35.32.
- CASES:**
- *DiStefano v. DiStefano*, 67 Conn. App. 628, 633, 787 A.2d 675 (2002). “In accordance with General Statutes § 46b-86 (b) and the holding in *DeMaria*, before the payment of alimony can be modified or terminated, two requirements must be established. First, it must be shown that the party receiving the alimony is cohabitating with another individual. If it is proven

that there is cohabitation, the party seeking to alter the terms of the alimony payments must then establish that the recipient's financial needs have been altered as a result of the cohabitation.”

- DeMaria v. DeMaria, 247 Conn. 715, 719-720, 724 A.2d 1088 (1999). “The Appellate Court essentially treated the word ‘cohabit’ as synonymous with ‘living together,’ and concluded that in view of its finding that the plaintiff was living with an unrelated male, the trial court should have terminated her alimony We conclude, in accordance with the definition contained in § 46b-86 (b), that the trial court properly construed the term ‘cohabitation’ as used in the dissolution judgment to include the financial impact of the living arrangement on the cohabiting spouse, and accordingly, we reverse the judgment of the Appellate Court.”
- D’Ascanio v. D’Ascanio, 237 Conn. 481, 486, 678 A.2d 469 (1996). “On her cross appeal, however, the defendant asserts that no evidence was presented to support the trial court's finding that her living arrangement with Griffin caused such a change of circumstances as to alter her financial needs. We disagree.”
- Mihalyak v. Mihalyak, 30 Conn. App. 516, 521, 620 A.2d 1327 (1993). “The defendant contends, and we agree, that the dissolution judgment itself provided for termination of the alimony upon the occurrence of the plaintiff's cohabitation. The provisions of General Statutes § 46b-86 are inapplicable. The trial court should have considered the terms of the dissolution decree, which incorporated the agreement of the parties in the form of a stipulation.”
- Charpentier v. Charpentier, 206 Conn. 150, 152, 536 A.2d 948 (1988). “A major contention of the defendant is that the trial court's financial orders were impermissibly influenced by her admitted lesbian sexual preference. We conclude that the trial court's financial orders were not so premised, but instead reasonably reflected the economic burden imposed on the plaintiff by the custody decree as the parent primarily responsible for raising five young children.”
- Duhl v. Duhl, 7 Conn. App. 92, 94, 507 A.2d 523 (1986). “The plaintiff argues, however, that 46b-86(b) requires a substantial change in circumstances and some finding by the court that the relationship will endure before a court may terminate alimony. The plaintiff summarized this claim during oral argument before this court by stating that the trial court must find a substantial change in financial circumstances, namely the financial interdependence such as is found in a common law marriage, before it may order the termination of alimony payments. No such requirement is to be found in the statute nor do we feel that such a requirement is necessary to fulfill its purpose.”
- Connolly v. Connolly, 191 Conn. 468, 475, 464 A.2d 837 (1983). “By its very terms, General Statutes 46b-86(b) mandates that when the statute is to be invoked notice must be given to the parties and a hearing held on the claim.”
- Kaplan v. Kaplan, 185 Conn. 42, 45-46, 440 A.2d 252 (1981). “We note that the General Assembly chose the broader language of ‘living with another person’ rather than ‘cohabitation’ and that this provision requires only a ‘change’ of circumstances, not a ‘substantial change’ as required by 46b-86 (a).”
- Gallo v. Gallo, 184 Conn. 36, 45, 440 A.2d 782 (1981). “The testimony before the trial court concerned only the woman with whom the defendant was cohabiting at the time of the hearing. Thus there is no basis in the evidence for the trial court to extend the restriction to any other woman. The judgment must be modified so that the overnight visitation restriction applies only to the particular woman who was living with the defendant at the time

of the hearing."

- McAnerney v. McAnerney 165 Conn. 277, 287, 334 A2d 437 (1973). "But no policy or rule of equity makes a divorced wife accountable to her former husband for her conduct . . . any more than it makes the enforcement of a debt contingent on a creditor's chastity."

**WEST KEY
NUMBERS:**

- *Husband and Wife* # 279
- *Divorce* # 245

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Cohabitation*

ENCYCLOPEDIAS:

- 27B C.J.S. *Divorce* (1986).
 - § 409. Modification or vacation of allowance—cohabitation of recipient spouse
- 24A AMERICAN JURISPRUDENCE 2d *Divorce and Separation* (1998).
 - § 793. Recipient spouse's cohabitation with another
 - § 794. Remarriage of spouse to each other; resumption of cohabitation
 - § 840. Cohabitation of dependent spouse
 - § 841. —effect on need for continued support; necessity and burden of proof
- *Cause Of Action To Obtain Increase In Amount Or Duration Of Alimony Based On Changed Financial Circumstances Of Party*, 19 COA 1 (1989).
 - § 31. Change caused or contributed to by recipient
 - § 33. Other sources of support
- *Modification Of Spousal Support On The Ground Of Supported Spouse's Cohabitation*, 6 POF3d 765 (1989).

**TEXTS &
TREATISES:**

- 8 ARNOLD H. RUTKIN, *CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS* (2d ed. 2000)
 - Chapter 35. Modification of alimony provisions
 - § 35.25. Modification of alimony based upon cohabitation
 - § 35.26. Proof of cohabitation
 - § 35.27. Relief available based upon cohabitation
 - Chapter 42. Child custody and visitation
 - §42.2. Rights of unmarried or non-cohabiting parents
 - §42.38. Restrictions on care and supervision
 - Chapter 44. Modification of custody and visitation orders
 - §44.16. Remarriage or cohabitation of parent
- 2 *FAMILY LAW PRACTICE IN CONNECTICUT* (1996).
 - Chapter 9. *Alimony in Divorce—Spousal Support*
 - § 9.14 Cohabitation considerations
- 6 ARNOLD H. RUTKIN, *FAMILY LAW AND PRACTICE* (2004).
 - Chapter 65. Unmarried Cohabitants
 - § 65.02. Unmarried cohabitants and the courts
 - § 65.03. Issues facing unmarried cohabitants
 - [1]. Support (Alimony or maintenance)
 - [b]. Post-divorce cohabitation as support determinant
 - [3]. Custody and visitation
 - [[c]. Post-Divorce cohabitation as a custody determinant

PAMPHLETS:

- LEGAL ASSISTANCE RESOURCE CENTER, *HOW TO MODIFY CHILD SUPPORT AND ALIMONY ORDERS* (August 2000).
http://www.larcc.org/pamphlets/children_family/modify_child_support_and

[_alimony.htm](#)

LAW REVIEWS:

- Edward S. Snyder, *Post-divorce Cohabitation And Its Effect On Spousal Support*, 1 AMERICAN JOURNAL OF FAMILY LAW 57 (Spring 1987).

COMPILER:

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library At Middletown, CT 06457. (860) 343-6560. [EMAIL](#)

Table 8 Connecticut's Cohabitation Statute

<h2 style="margin: 0;">Connecticut's Cohabitation Statute</h2> <p style="margin: 0;">Conn. Gen. Stats. § 46b-86 (b) (2005)</p>	
Text	<p>“In an action for divorce, dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.”</p>
<p><u>Knapp v. Knapp</u>, 270 Conn. 815, 825, 856 A.2d 358 (2004).</p>	<p>“Although § 46b-86 (b) does not specifically define cohabitation, our appellate courts consistently have referred to that statute as the cohabitation statute”</p> <p style="text-align: right;">[Continued]</p>
<h2 style="margin: 0;">History of Statute</h2>	
<p>OLR Report No. 94-R-0700 (July 29, 1994).</p>	<p>“The statute, CGS Sec. 46b-86(b), was enacted as PA 77-394. Before its passage the court could already alter alimony awards upon a showing of changed circumstances, unless the terms of the award itself precluded modification. PA 77-394 empowered the court to alter or terminate an alimony award upon a finding that the alimony recipient was living with another person under arrangements which alter his or her financial needs.</p> <p>PA 77-394 began as sHB 6174. It was referred to the Judiciary Committee and given a public hearing on March 2. The committee favorably reported the bill on April 4 and it passed the House on May 6 and the Senate on May 24, in both cases on consent with no debate. During the public hearing only one person spoke on the bill, attorney Samuel Schoonmaker from Stamford. Representing both himself and the American Academy of Matrimonial Lawyers, he spoke in support. Senator DePiano asked if the bill was designed to "correct" a situation in Stamford that had resulted in a state Supreme Court case where "somebody claimed that his wife was living with somebody else, out of wedlock and that therefore, he was not responsible to give her alimony and he lost that case?" Schoonmaker responded that this was the intent, to make it within the court's discretion. He said he was aware of another Stamford case where there was a substantial alimony award in favor of the wife while she had been living for 15 years without being married with a man who was providing her with very ample support. Schoonmaker said the bill was a practical attempt at economic justice and not an attempt to legislate morality. DePiano summed it up as "[Y]ou want alimony to be used only by the person receiving the alimony and not anybody else getting the benefit if it and conspiring between the two not to get married, so that the alimony would stay on forever. " Schoonmaker responded "That's right. " [cont'd]</p>

<p>OLR Report No. 94-R-0700 (July 29, 1994). [cont'd]</p>	<p>Although it was not specified in the testimony, the case they were referring to was probably <i>McAnerney v. McAnerney</i>, 165 Conn 277 (1973) a copy of which is enclosed. In that case a separation agreement, later incorporated in the divorce decree, obligated the plaintiff to pay alimony to his ex-wife until her remarriage or death. He subsequently sued because she was co-habiting with a man and he argued that he was no longer bound by the agreement because his ex-wife and her partner had created a condition approximating marriage thus circumventing the terms of the agreement. The Court held that neither of the terms of the agreement, death or remarriage of the wife, had occurred and that Connecticut law did not recognize common law marriage, and thus the plaintiff husband had no cause of action against his ex-wife.”</p>
<p><u>McAnerney v. McAnerney</u>, 165 Conn. 277, 285-286, 334 A.2d 437 (1973).</p>	<p>Since our decision in the <i>Hames</i> [163 Conn. 588, 316 A.2d 379 (1972)] case, there should be little question as to what is required under our law to constitute the status of marriage. Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. <i>Hames v. Hames</i>, supra, 7; <i>State ex rel. Felson v. Allen</i>, 129 Conn. 427, 432, 29 A.2d 306. It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status. Thus, for the purposes of the laws of this jurisdiction and for the purposes of the contract, Mrs. McAnerney's cohabitation with another has no effect on the contractual provision whereby the plaintiff's obligation terminates with the wife's remarriage.</p>

Table 9 ALR annotation on cohabitation following divorce

ALR Annotations: Cohabitation Following Divorce	
Subject	Title of Annotation
Alimony, Modification of	<ul style="list-style-type: none"> • Diane M. Allen, Annotation, <i>Divorced Or Separated Spouse's Living With Member Of Opposite Sex As Affecting Other Spouse's Obligation Of Alimony Or Support Under Separation Agreement</i>, 47 ALR4th 38 (1986). • Annotation, <i>Divorced Woman's Subsequent Sexual Relations Or Misconduct As Warranting, Alone Or With Other Circumstances, Modification Of Alimony Decrees</i>, 98 ALR3d 453 (1980).
Children	<ul style="list-style-type: none"> • Robin Cheryl Miller, Annotation, <i>Child Custody And Visitation Rights Arising From Same-Sex Relationship</i>, 80 ALR5th 1 (2000) • Diane M. Allen, Annotation, <i>Propriety Of Provision Of Custody Or Visitation Order Designed To Insulate Child From Parent's Extramarital Sexual Relationships</i>, 40 ALR4th 812 (1985) • Annotation, <i>Custodial Parent's Sexual Relations With Third Person As Justifying Modification Of Child Custody Order</i>, 100 ALR3d 625 (1980).
Child support arrearage	<ul style="list-style-type: none"> • Alice M. Wright, Annotation, <i>Right To Credit On Child Support Arrearages For Time Parties Resided Together After Separation Or Divorce</i>, 104 ALR5th 605 (2002).

Figure 1 Motion for modification and/or termination of periodic alimony

DOCKET NO. FA 97 0161402 S	:	SUPERIOR COURT
JOSEPH DISTEFANO	:	JUDICIAL DISTRICT OF
		STAMFORD/NORWALK
VS.	:	AT STAMFORD
RENE DISTEFANO		SEPTEMBER 1, 2000

MOTION FOR MODIFICATION AND/OR TERMINATION OF PERIODIC ALIMONY

[POST JUDGMENT]

The plaintiff, JOSEPH DISTEFANO, by and through his attorneys, Piazza & Pickel, hereby moves that this Honorable Court modify the existing alimony order as there has been a substantial change in financial circumstances since the entering of the orders. In support hereof, plaintiff sets forth as follows:

1. That the marriage of the parties was dissolved on an uncontested basis on October 14, 1998 (Kavanewsky, J.).
2. That the Agreement dated October 14, 1998, which was incorporated into the judgment of dissolution sets forth orders with respect to alimony.
3. Specifically, the order provides as follows:

ARTICLE IV - ALIMONY

(4.1.) The Husband shall pay to the Wife as periodic alimony, the sum of \$1,505.60 per month commencing November 1, 1998 payable on the 1st of each month which shall terminate upon the first to occur: the death of either party, remarriage of the Wife, cohabitation by the Wife pursuant to statute...

4. Since the entering of the above referenced orders, the Wife has cohabitated and therefore, a modification or termination of the alimony order is necessary.

WHEREFORE, the plaintiff moves that this court modify the following existing periodic alimony order by terminating the order.

THE PLAINTIFF

JOSEPH DISTEFANO

BY _____

Name

Firm

Address

Phone number Juris Number

Table 10 Unpublished Connecticut Decisions: Cohabitation following divorce

<h2 style="margin: 0;">Unpublished Connecticut Decisions: Cohabitation Following Divorce</h2>	
<p><u>Clay v. Clay</u>, No. FA98-0717513-S (Conn. Super. Ct., Hartford, Nov. 24, 2003), 36 Conn. L. Rpt. 67.</p>	<p>“The so-called ‘cohabitation statute’ is codified as § 46b-86(b) and provides that ‘in an action for divorce dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the CT Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.’ The statute, and its subsequent interpretation requires a showing that the party receiving alimony is living with another person, and that such living arrangement result in a change of circumstances that alter the financial needs of such party.” [emphasis added]</p>
<p><u>Santese (DeNunzio) v. Santese</u>, FA 96-00727935 (Mar. 14, 2002), 2002 WL 521393.</p>	<p>Although the parties have stipulated that the plaintiff and her male friend have lived together since August 2001, they disagree over whether or not those living arrangements have altered the plaintiff's financial needs.</p> <p>The plaintiff contends that she continues to maintain herself financially ". . . and receives no financial benefits . . . other than an indirect benefit that would be provided by sharing living quarters with any roommate." (Plaintiff's Summary of Law). The plaintiff argues that although the amount she pays for rent may be lower, her overall financial circumstances have not been improved by her current living arrangement.</p> <p>The court is not persuaded.</p>
<p><u>Keeys v. Keeys</u>, No. FA 93-0355163 S (Mar. 19, 2002), 2002 WL 532425.</p>	<p>In this case, the judgment provided that alimony would terminate upon the issuance of an order terminating alimony pursuant to 46b-86 (b). That is not self executing. Moreover, the statute does not require termination upon a finding that an alimony recipient is living with another person, but also includes modification, suspension, or reduction as relief for a payor. The Muhlalyak decision does not alter the principle that alimony cannot be modified retroactively. <u>Sanchione v. Sanchione</u>, 173 Conn. 397 (1977).</p> <p>The court denies so much of the defendant's motion as seeks to have the modification of alimony be made retroactive to the date the plaintiffs cohabitation began, but grants the defendant's motion for attorney's fees.</p> <p style="text-align: right;">[cont'd]</p>

Unpublished Connecticut Decisions: Cohabitation following divorce [cont'd]

<p><u>Stranko v. Stranko</u>, No. FA93 030 11 74 (Feb. 28, 2002), 2002 WL 450471.</p>	<p>Therefore, the holding in Connelly that the recipient of alimony must have notice through a motion for modification that she is facing a request to terminate alimony because of cohabitation in accordance with Connecticut General Statutes § 46b-86 (b) is clearly not applicable to this case. The plaintiff herein is not asking this court to terminate the defendant's alimony. The plaintiff is asking the court to prevent the defendant from enforcing a claim for arrearage as a result of conduct on her part that constitutes laches, equitable estoppel or waiver.</p>
<p><u>Iadarola v. Iadarola</u>, No. FA98 035 65 52 S (Aug. 10, 2001), 2001 WL 1044627.</p>	<p>The Appellate Court recently has explained the difference between a termination of alimony because of operation of a cohabitation clause in a judgment and a modification under § 46b-86 (b) of the General Statutes. <u>DeMaria v. DeMaria</u>, 47 Conn. App. 672 (1998). The latter required proof of living together and a resultant change in the alimony recipient's financial circumstances. <u>Mihalyak v. Mihalyak</u>, 30 Conn. App. 516, 520-21 (1993).</p>

Appendix 1A

Sexual Assault in a Marital or Cohabiting Relationship

The Connecticut General Assembly
Office of Legislative Research

OLR Report

2001-R-0512

May 29, 2001

By: Sandra Norman-Eady, Chief Attorney
Abigail Ammerman, Legislative Intern
Michele Melley, Legislative Fellow

You wanted to know why penetration is required to commit sexual assault in a marital or cohabiting relationship in Connecticut. You also wanted to know if similar laws in other states have penetration as an element of the crime.

SUMMARY

In 1981, Connecticut enacted a law making it a class B felony, punishable by up to 20 years imprisonment, a \$15,000 fine, or both, to commit sexual assault in a marital or cohabiting relationship. A person commits this crime when he forces or threatens the use of force to get his spouse or cohabitor to have sexual intercourse. The threat must reasonably cause the spouse or cohabitor to fear physical injury. For the purpose of this crime, “sexual intercourse” means vaginal intercourse, anal intercourse, or fellatio, or cunnilingus, no matter how slight the penetration.

A married person cannot commit against his spouse the lesser offense involving sexual contact (i.e., touching but no penetration), which by definition excludes contact between married people.

The legislative history of HB 5247, An Act Concerning Sexual Assault in a Spousal or Cohabiting Relationship, suggests that the bill was limited to penetration (or rape) for two reasons. One was an effort to get it passed. The bill was proposed with broader application in 1979 but died in the Judiciary Committee.

The other reason had to do with the issue of proof. Sherry Chase, coordinator of the Connecticut Task Force on Abused Women, testified before the Judiciary Committee that the bill’s proponents believed sexual contact would be difficult to prove in a marital or cohabiting relationship and limiting the bill to

rape would improve its chance at passage. We have attached the relevant text from the House and Senate debates and the Judiciary Committee’s public hearing.

STATE SEXUAL ASSAULT CRIMES

We researched the statutes in 28 randomly selected states and found only four, Arizona, Idaho, Mississippi, and Oklahoma, that have a separate sexual assault crime for people in a marital or cohabitating relationship. The law in each of these states and Connecticut as shown in Table 1 below, includes penetration as an element of the crime.

TABLE 1: STATES WITH SEPARATE SEXUAL ASSAULT CRIMES FOR COUPLES IN COHABITATING OR MARITAL RELATIONSHIPS

States	Statutory Citations	Statutes
Arizona	13.1406.01	A person commits sexual assault of a spouse when he uses or threatens to use force against his spouse or another person to intentionally or knowingly engage in sexual intercourse or oral sexual contact with his spouse without consent.
Connecticut	53a-70b	A person commits this crime when he forces or threatens the use of force to get his spouse or cohabitor to have sexual intercourse.
Idaho	18-1601	Rape of a spouse occurs when, during the course of sexual penetration, a spouse’s resistance is (1) overcome by force or violence, (2) prevented by threats of immediate bodily harm; or (3) prevented by an intoxicating substance administered by the actor.
Mississippi	97-3-95, 99	Sexual battery of a spouse is committed between married parties who are either separated or living apart where sexual penetration was forced and occurred without consent.
Oklahoma	21-1111	Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

In the remaining 23 states, most sexual assault crimes may be committed by anyone, regardless of his relationship to the victim. For these crimes, the statutes specify that a marital relationship is not an affirmative defense to the crime. However, even in these states there are certain sexual assault crimes that cannot be committed between married people. The majority of these states recognize sexual contact as a crime between married couples. These crimes generally involve force or lack of consent by the victim. Of the 23 states, Massachusetts, Missouri, Nevada, New Jersey, North Carolina, Ohio, and Rhode Island, are the only ones that appear to include penetration as an element in the lowest classified sexual assault crime involving adults.

Table 2 consists of a brief summary of the lowest classified sexual assault crime involving adults in the 23 states.

TABLE 2: LOWEST CLASSIFIED SEXUAL ASSAULT CRIMES IN 23 STATES

States	Statutory Citations	Statutes
Alabama	13a-6-66, 67	Sexual abuse occurs involves sexual contact without consent.
Arkansas	5-14-109	Sexual abuse occurs involves sexual contact without consent.

Colorado	18-3-409	Sexual assault in the third-degree occurs when there is sexual contact without consent. There is no marital defense for sexual assault.
Delaware	5.767, 768, 769	An actor is guilty of unlawful sexual contact in the first-second-and third-degree when he has intentional sexual contact without consent.
Georgia	16-6-5.1	Sexual assault is committed when nonconsensual sexual contact occurs without consent.
Hawaii	707-733	Sexual assault in the fourth-degree is committed when sexual contact occurs without consent.
Indiana	35-42-4-8	Sexual battery is committed when a person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touches another person when that person is compelled to submit due to force, imminent threat of force, or incapacitation.
Iowa	702.17	Sexual assault in the third-degree is committed when a sex act is performed by force or is nonconsensual, whether or not the victim is the actor's spouse or is cohabitating with the actor. A "sex act" is defined as any sexual contact, including, but not limited to sexual penetration.
Massachusetts	265.22	Rape is sexual intercourse in which the actor compels the victim to submit due to force or threat of bodily harm.
Minnesota	609.342	Fourth- or fifth-degree criminal sexual conduct is committed when the actor engages in sexual contact by use of force and without consent.
Missouri	566.023, 040	The act of sexual assault is committed if the actor engages in nonconsensual sexual intercourse. Marriage is not a defense for sexual assault .
Montana	45-5-502	An actor who knowingly subjects another person to sexual contact without consent commits the offense of sexual assault.
Nebraska	28-319	Second- and third-degree sexual assault may each be committed by sexual contact without consent.
Nevada	200.366	A person commits sexual assault when he subjects another person, against the person's will, to sexual penetration, or forces him to make a sexual penetration on himself or another, or on a beast.
New Hampshire	632-A:5	A person commits felonious sexual assault when he subjects a person to sexual contact without consent and causes serious personal injury to the person.
New Jersey	2C:14-2	An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under specified circumstances, including where the actor uses physical force or coercion, but the victim does not sustain severe personal injury.
New Mexico	30-9-12	Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached age 18, or intentionally causing another who has reached age 18 to touch one's intimate parts.
New York	130.55	A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent.
North Carolina	14-27.5	A person is guilty of a sexual offense in the second degree if he engages in a sexual act with another person, including his spouse, by force and against the will of the other person. "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body.

North Dakota	12.1-20-04	A person is guilty of sexual assault if he knowingly has sexual contact with another person, or causes a third person to do so, whom he knows or has reasonable cause to believe would find the contact offensive.
Ohio	2907.02	A person is guilty of rape when he compels another person to submit to sexual conduct (penetration) by force or threat of force.
Oregon	163.415	A person commits the crime of sexual abuse in the third degree if he subjects another person to sexual contact and the victim does not consent to the sexual contact.
Rhode Island	11-37-2	A person is guilty of first-degree sexual assault if he engages in sexual penetration with another person by force or coercion, ability to overcome the victim through concealment, or element of surprise.

Cohabitation Agreements in Connecticut

A Guide to Resources in the Law Library

- “. . . cohabitation alone does not create any contractual relationship or, unlike marriage, impose any other legal duties upon the parties. In this jurisdiction, common law marriages are not accorded validity.” Boland v. Catalano, 202 Conn. 333, 339, 521 A.2d 142 (1987). .
- “Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity.” Ibid.
- “In support of his first argument, the plaintiff cites the definition, adopted by our Supreme Court in *Wolk v. Wolk*, 191 Conn. 328, 332, 464 A.2d 780 (1983), that ‘[c]ohabitation is a dwelling together of man and woman in the same place in the manner of husband and wife.’ The plaintiff apparently interprets the phrase ‘in the manner of husband and wife’ to suggest that cohabitation is for all intents and purposes synonymous with marriage, and that cohabitation raises all of the same presumptions regarding the treatment of assets as does marriage. Such an interpretation, however, would essentially transform cohabitation into common-law marriage, contrary to the refusal of this state to recognize such relationships. See *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973) (‘[a]lthough other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status’ [citations omitted]). ‘[C]ohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties.’ *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).” Herring v. Daniels, 70 Conn. App. 649, 655, 805 A.2d 718 (2002).
- “Connecticut does not presently recognize, as valid marriages, living arrangements or informal commitments entered into in this state and loosely categorized as common law marriages. *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973); *Hames v. Hames*, 163 Conn. 588, 593, 316 A.2d 379 (1972); *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). Only recently this rule of law has been reaffirmed. “In this jurisdiction, common law marriages are not accorded validity. . . . The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship.” (Citations omitted.) *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).” Collier v. Milford, 206 Conn. 242, 248, 537 A.2d 474 (1988).

Introduction

In 1978 the Supreme Court of Oregon noted in Beal v. Beal, 577 P2d 507, 508:

Historically, courts have been reluctant to grant relief of any kind to a party who was involved in what was termed a ‘meretricious’ relationship. Courts took the position that the parties had entered into a relationship outside the bounds of law, and the courts would not allow themselves to be used to solve the property disputes evolving from that relationship. Generally, the parties were left as they were when they came to court, with ownership resting in whoever happened to have title or possession at the time. The rationale was predicated on public policy or even an invocation of the clean hand doctrine.

In 1976 the California Supreme Court decided Marvin v. Marvin, 557 P.2d 106, 116:

In summary, we base our opinion on the principle that adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other person to contract respecting their earnings and property rights. Of course, they cannot lawfully contract to pay for the performance of sexual services, for such a contract is, in essence, an agreement for prostitution and unlawful for that reason. But they may agree to pool their earnings and to hold all property acquired during the relationship in accord with the law governing community property; conversely they may agree that each partner’s earnings and the property acquired from those earnings remains the separate property of the earning partner. So long as the agreement does not rest upon illicit meretricious consideration, the parties may order their economic affairs as they choose, and no policy precludes the courts from enforcing such agreements.

Section 13.2

Validity

A Guide to Resources in the Law Library

SCOPE

Bibliographic resources relating to the validity of unmarried cohabitation agreements in Connecticut

DEFINITIONS:

- “Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity.” Boland v. Catalano, 202 Conn. 333, 339, 521 A.2d 142 (1987).
- “We conclude that our public policy does not prevent the enforcement of agreements regarding property rights between unmarried cohabitants in a sexual relationship.” *Ibid.*, p. 342.
- “[W]here the parties have established an unmarried, cohabiting relationship, it is the specific conduct of the parties within that relationship that determines their respective rights and obligations, including the treatment of their individual property Any such finding must be determined by reference to the unique circumstances and arrangements between the parties present in each case. Those matters are questions of fact that are within the singular province of the trial court, and can only be determined by evaluating the credibility of the witnesses and weighing conflicting evidence.” Herring v. Daniels, 70 Conn. App. 649, 656 (2002).

STATUTES:

- CONN. GEN. STAT. (2008)
§ 46b-61. Orders re children where parents live separately.

FORMS:

- 14 AM JUR PLEADING AND PRACTICE *Husband and Wife* §14 (2004).
Complaint, petition, or declaration—To enforce oral contract—Parties to live together without marriage—For declaration of rights, partition of property, support or damages—Property held in constructive trust with duty to reconvey to woman

CASES:

- Weicker v. Granatowski, No. 398167 (Conn. Super. Ct., Bridgeport, Sep. 2, 2003). 35 CONN. L. RPTR. 333 (September 29, 2003). “What is left is that the parties carried on a platonic relationship while living in the Guilford home for two years; the defendant paid primarily all of the expenses, with the plaintiff contributing only furniture and food supplies. From the evidence presented, the court does not find probable cause that the parties expressly or implicitly agreed that the plaintiff would have an interest in the Guilford property, nor can the court divine an equitable basis for such an interest. Even if the court were to find that the parties carried on a romantic relationship while in the Guilford home, as observed supra, “cohabitation alone does not create any contractual relationship or . . . impose other legal duties upon the parties.” Boland v. Catalano, . . . 202 Conn.[333,] 339.
- Herring v. Daniels, 70 Conn. App. 649, 655 (2002). “The plaintiff apparently interprets the phrase ‘in the manner of husband and wife’ to suggest that cohabitation is for all intents and purposes synonymous with marriage, and

that cohabitation raises all of the same presumptions regarding the treatment of assets as does marriage. Such an interpretation, however, would essentially transform cohabitation into common-law marriage, contrary to the refusal of this state to recognize such relationships."

- Boland v. Catalano, 202 Conn. 333, 339, 521 A.2d 142 (1987). "Contracts expressly providing for the performance of sexual acts, of course, have been characterized as meretricious and held unenforceable as violative of public policy."
- Burns v. Koellmer, 11 Conn. App. 375, 380, 527 A.2d 1210 (1987). "Claims of a contractual or quasi-contractual nature between parties in illicit relationships but which do not involve payment for prohibited sexual behavior are enforceable in courts of law."

WEST KEY NUMBERS:

- Implied and Constructive Contracts # 47
- Contracts # 112 Immorality

DIGESTS:

- ALR Digest: *Unmarried Cohabitants*
- CYNTHIA C. GEORGE AND THOMAS D. COLIN. CONNECTICUT FAMILY LAW CITATIONS: *Cohabitation*

ENCYCLOPEDIAS:

- George L. Blum, Annotation, *Property Rights Arising From Relationship of Couple Cohabiting Without Marriage*, 69 ALR5th 219 (1999).
- Jean E. Maess, Annotation, *Order Awarding Temporary Support or Living Expenses Upon Separation of Unmarried Partners Pending Contract Action Based on Services Relating to Personal Relationship*, 35 ALR4th 409 (1985).
- Jane Massey Draper, Annotation, *Recovery for Services Rendered by Persons Living in Apparent Relation of Husband and Wife Without Express Agreement for Compensation*, 94 ALR3d 552 (1979).

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 47. *Property rights and agreements between unmarried cohabitations*
 - § 47.3 Validity
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2007).
 - Chapter 65. Unmarried cohabitants
 - § 65.04. Unmarried cohabitants' oral agreements
 - [1]. Express oral agreements
 - [2]. Implied oral agreements
 - [3]. Summary of trend in the law
 - § 65.05. Written cohabitation agreements
 - [1]. The importance of a written agreement
 - [2]. Negotiating a written cohabitation agreement
 - [3]. Terms to be included in the agreement
 - § 65.06. SAMPLE FORM: Cohabitation agreement
 - § 65.07. CHECKLIST: Provisions of a cohabitation agreement
- SAMUEL GREEN AND JOHN V. LONG. MARRIAGE AND FAMILY LAW AGREEMENTS (2d ed. 1984).
 - Chapter 3 Cohabitation
 - §3.03 The extension of marital and familial rights to unmarried cohabitants
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2006).

Chapter 100 Cohabitation Agreements
§ 100.61 Recognition of cohabitation agreements

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Section 3.3

Grounds

A Guide to Resources in the Law Library

- “In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.” Boland v. Catalano, 202 Conn. 333, 340-41, 521 A.2d 142 (1987), quoting Marvin v. Marvin, 18 Cal. 3d 660, 665, 134 Cal. Rptr. 815, 557 P.2d 106 (1976).” Burns v. Koellmer, 11 Conn. App. 375, 380-381, 527 A.2d 1210 (1987).

Section 13.3a

Expressed or Implied Contract

A Guide to Resources in the Law Library

SCOPE

Bibliographic resources relating to the requisites of express or implied contracts between unmarried cohabitants in Connecticut

DEFINITIONS:

- **Express Agreement:** "is one in which the parties arrive at their agreement by words, either oral or written." Martens v. Metzgar, 524 P.2d 666, 671(1974).
- **Implied Contract:** "is an agreement between the parties which is not expressed in words but which is inferred from the acts and the conduct of the parties The test is whether the conduct and acts of the parties show an agreement. " Brighenti v. New Britain Shirt Corporation, 167 Conn. 403, 406, 268 A.2d 391 (1974).
- "A contract is an agreement between parties whereby one of them acquires a right to an act by the other; and the other assumes an obligation to perform that act. . . . Contracts may be express or implied. These terms, however, do not denote different kinds of contracts, but have reference to the evidence by which the agreement between the parties is shown. If the agreement is shown by the direct words of the parties, spoken or written, the contract is said to be an express one. But if such agreement can only be shown by the acts and conduct of the parties, interpreted in the light of the subject matter and of the surrounding circumstances, then the contract is an implied one." Skelly v. Bristol Savings Bank, 63 Conn. 83, 87, 26 A. 474 (1893).
- **Express or implied:** "'Whether [a] contract is styled express or implied involves no difference in legal effect, but lies merely in the mode of manifesting assent.' (Internal quotation marks omitted.) Boland v. Catalano, 202 Conn. 333, 337, 521 A.2d 142 (1987). 'A true implied [in fact] contract can only exist [however] where there is no express one. It is one which is inferred from the conduct of the parties though not expressed in words. Such a contract arises where a plaintiff, without being requested to do so, renders services under circumstances indicating that he expects to be paid therefor, and the defendant, knowing such circumstances, avails himself of the benefit of those services. In such a case, the law implies from the circumstances, a promise by the defendant to pay the plaintiff what those services are reasonably worth.' (Internal quotation marks omitted.) Bershtein, Bershtein & Bershtein, P.C. v. Nemeth, 221 Conn. 236, 241-42, 603 A.2d 389 (1992); Freda v. Smith, 142 Conn. 126, 134, 111 A.2d 679 (1955). Although both express contracts and contracts implied in fact depend on actual agreement; Coelho v. Posi-Seal International, Inc., 208 Conn. 106, 111, 544 A.2d 170 (1988); '[i]t is not fatal to a finding of an implied contract that there were no express manifestations of mutual assent if the parties, by their conduct, recognized the existence of contractual obligations.' Rahmati v. Mehri, 188

Conn. 583, 587, 452 A.2d 638 (1982).” Janusauskas v. Fichman, 264 Conn. 796, 804-804, 826 A.2d 1066 (2003).

CASES:

CONNECTICUT

- Boland v. Catalano, 202 Conn. 333, 340-341, 521 A.2d 142 (1987). “In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract”
- Burns v. Koellmer, 11 Conn. App. 375, 380, 527 A.2d 1210 (1987). “Claims of a contractual or quasi-contractual nature between parties in illicit relationships but which do not involve payment for prohibited sexual behavior are enforceable in courts of law.”
- Bridgeport Pipe Engineering Co. v. DeMatteo Construction Co., 159 Conn. 242, 249, 268 A.2d 391 (1970). “To constitute an offer and acceptance sufficient to create an enforceable contract, each must be found to have been based on an identical understanding by the parties.”

OTHER STATES

- Marvin v. Marvin, 557 P.2d 106 (1976) [California].
- Beal v. Beal, 577 P.2d 507 (1978) [Oregon].

WEST KEY NUMBERS:

- Marriage #54 Effect of informal or invalid marriage
- Contract # 112 Immorality
- Implied and constructive contracts # 47

ENCYCLOPEDIAS:

- 17A AM JUR 2D *Contracts* (2004).
Express, implied, or constructive contracts §§ 12-18.
- Proving the property and other rights of cohabitants and domestic partners, 95 POF3d 1 (2007).

TEXTS & TREATISES:

- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2nd ed. 2000).
Chapter 47. Property rights and agreements between unmarried cohabitants
§ 47.3. Validity
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2007).
Chapter 65. Unmarried cohabitants
§ 65.04. Unmarried cohabitants’ oral agreements
[2]. Implied oral agreements
- SAMUEL GREEN AND JOHN V. LONG. MARRIAGE AND FAMILY LAW AGREEMENTS (2d ed. 1984).
Chapter 3 Cohabitation
§ 3.17. Express contract
§ 3.19. Implied-in-fact contracts
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2006).
Chapter 100. Cohabitation Agreements

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Proving the Property and Other Rights of Cohabitants and Domestic Partners
95 POF3d 1

by **Monique C.M. Leahy**

Table 11. Proof of Existence, Terms, And Breach, or Lack thereof, of Oral Contract to Convey Property between Unmarried Cohabitants

VI. Proof of Existence, Terms, and Breach, or Lack thereof, of Oral Contract to Convey Property between Unmarried Cohabitants	
§ 48 Model Case	
§ 49	Parties' cohabitation
§ 52	Existence and terms of oral agreement
§ 54	Parties' acquisition of property
§ 54	Parties' acquisition of property
§ 55	Plaintiff's performance of agreement
§ 56	Defendant's breach of agreement
§ 62	No oral agreement

Table 12 Proof of Existence and Breach of Implied-In-Fact Contract for Services

VIII. Proof of Implied Contract for Cohabitant's Services	
§ 78 Model Case	
§ 79	Parties' cohabitation
§ 80	Pooling of resources; sharing of expenses
§ 81	Plaintiff's giving up of job to render household and related services
§ 82	Parties' acquisition of property
§ 83	Plaintiff's understanding as to rights in acquired property
§ 84	Parties held themselves out as husband and wife
§ 85	Plaintiff's performance of implied agreement
§ 86	Defendant's breach of implied agreement
§ 87	Witness' acquaintance with parties
§ 88	Parties held themselves out as husband and wife
§ 89	Defendant's statement regarding ownership of property

Implied Partnership Agreement or Joint Venture

A Guide to Resources in the Law Library

- SCOPE** Bibliographic resources relating to the requisites of an implied partnership agreement or joint venture between unmarried cohabitants in Connecticut
- DEFINITIONS:**
- “The distinction between a partnership and a joint venture is often slight, the former commonly entered into to carry on a general business, while the latter is generally limited to a single transaction.” *Travis v. St. John*, 176 Conn. 69, 72, 404 A.2d 885 (1978).
- CASES:**
- CONNECTICUT**
- *Boland v. Catalano*, 202 Conn. 333, 340-341, 521 A.2d 142 (1987). “In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates . . . agreement of partnership or joint venture or some other tacit understanding between the parties.”
- OTHER STATES**
- *Estate of Thornton*, 499 P2d 864, 868 (1972). “She and Ray Thornton jointly contributed their labor to the cattle and farming enterprise; the evidence reveals that they shared in the decision making concerning the enterprise; and, necessarily, they benefited jointly from the profits thereof. From the circumstances of their relationship and their acts in the management of the farming business, the existence of a contract of partnership can be inferred.”
- WEST KEY NUMBERS:**
- *Partnership* # 15, 20, 22, 26, 52, 111, 218(3)
 - *Joint Ventures*
- ENCYCLOPEDIAS:**
- George L. Blum, Annotation, *Property Rights Arising From Relationship of Couple Cohabiting Without Marriage*, 69 ALR5th 219 (1999). §9 Partnership agreement or joint venture
 - *Property Rights Of Unmarried Cohabitants*, 46 AM JUR PROOF OF FACTS 2D 495 (1986).
 - § 6. Implied-in-fact agreement between cohabitants—partnership, joint venture, or pooling agreement
 - §§ 28-36. Proof of implied partnership agreement between unmarried cohabitants
- TEXTS & TREATISES:**
- SAMUEL GREEN AND JOHN V. LONG. MARRIAGE AND FAMILY LAW AGREEMENTS (2d ed. 1984).
 - Chapter 3 Cohabitation
 - § 3.21 Implied partnership and joint venture

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2006).
Chapter 100 Cohabitation Agreements

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Table 13 Proof of Implied Partnership Agreement between Unmarried Cohabitants

IX. Proof of Implied Partnership to Convey Property Between Unmarried Cohabitants	
§ 90. Model Case	
§ 91	Parties' cohabitation
§ 92	Purchase of business property
§ 93	Plaintiff's prior employment
§ 94	Nature of the business enterprise
§ 95	Commencement and expansion of the business
§ 96	Parties' contribution of capital to business; pooling of resources
§ 97	Plaintiff's maintenance of business records
§ 98	Other services rendered by plaintiff
§ 99	Parties' joint liability for indebtedness
§ 101	Never held themselves out as partners

Quantum Meruit

A Guide to Resources in the Law Library

SCOPE

Bibliographic resources relating to unmarried cohabitant seeking equitable relief under the doctrine of quantum meruit.

DEFINITIONS:

- **Quantum meruit:** “Literally translated, the phrase ‘quantum meruit’ means ‘as much as he deserved.’ ‘Quantum meruit’ is a liability on a contract implied by law It is premised on the finding of an implied promise to pay the plaintiff as much as he reasonable deserves, and it is concerned with the amount of damages resulting from an implied promise by the defendant to pay.” Derr v. Moddy, 5 Conn. Cir. 718, 721-722, 261 A.2d 290(1969).
- **Unjust enrichment:** “This doctrine is based upon the principle that one should not be permitted unjustly to enrich himself at the expense of another but should be required to make restitution of or for property receive, retained or appropriated” Franks v. Lockwood, 146 Conn. 273, 278, 150 A.2d 215 (1959).
- **Comparison:** “. . . unjust enrichment has been the form of action commonly pursued in this jurisdiction when the benefit that the enriched party receives is either money or property Quantum meruit, by comparison, is the form of action which has been utilized when the benefit received was the work, labor, or services of the party seeking restitution.” Burns v. Koellmer, 11 Conn. App. 375, 384, 527 A.2d 1210 (1987).

CASES:

- Boland v. Catalano, 202 Conn. 333, 340-341, 521 A.2d 142 (1987). “The courts may also employ the doctrine of quantum meruit”
- Burns v. Koellmer, 11 Conn. App. 375, 383-384, 527 A.2d 1210 (1987).
Quantum meruit is the remedy available to a party when the trier of fact determines that an implied contract for services existed between the parties, and that, therefore, the plaintiff is entitled to the reasonable value of services rendered Such contracts are determined from the evidence of the parties’ course of conduct which implies a promise to pay for the services rendered. The pleadings must allege facts to support the theory that the defendant, by knowingly accepting the services of the plaintiff and representing to her that she would be compensated in the future, impliedly promised to pay her for the services she rendered.

WEST KEY NUMBERS:

- Implied and constructive contracts #30

ENCYCLOPEDIAS:

- 66 AM JUR 2D *Restitution and Implied Contracts* (2001).
§ 78. Husband and wife; unmarried cohabitation
- *Cause of Action by Unmarried Cohabitant to Enforce Agreement or Understanding Regarding Support or Division of Property*, 8 CAUSES OF ACTION 2D 1 (1995).
§ 16. Quantum meruit
- *Property Rights Of Unmarried Cohabitants*, 46 AM JUR PROOF OF FACTS 2D

495 (1986).

§ 8. Recovery in quantum meruit or by imposition of constructive trust

TEXTS & TREATISES:

- SAMUEL GREEN AND JOHN V. LONG. MARRIAGE AND FAMILY LAW AGREEMENTS (2d ed. 1984).
Chapter 3 Cohabitation
§ 3.20. Quasi contract and the valuation of domestic service
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2006).
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Table 14 Constructive trust

Constructive Trust	
<p><u>Gulack v. Gulack</u>, 30 Conn. App. 305, 310, 620 A.2d 181 (1993).</p>	<p>“The elements of a constructive trust are the intent by a grantor to benefit a third person, the transfer of property to another who stands in a confidential relationship to the grantor with the intent that the transferee will transfer the property to the third person, and the unjust enrichment of the transferee if the transferee is allowed to keep the property. A constructive trust is created by operation of law when these elements are present.”</p>
<p><u>Castaldo v. Castaldo</u>, No. SPBR 941228656 (Conn. Super. Ct., Fairfield Housing Session at Bridgeport, Jul. 19, 1995), 15 CONN. L. RPTR. 135, 1995 WL 476798.</p>	<p>“There is no common law marriage in the State of Connecticut but we do recognize contract claims. <i>Boland v. Catalano</i>, supra [202 Conn. 333,]340 [(1987)]. Furthermore the allegations of the pleadings indicate that the plaintiff and the defendant are still related one to another, to wit; they have a parental obligation to a minor child issue of their dissolved marriage. This is sufficient under Connecticut law to allege a special or confidential relationship to be able to satisfy the allegations of a constructive trust.”</p>

Table 15 Resulting Trust

<h2 style="margin: 0;">Resulting Trust</h2>	
<p><u>Farrah v. Farrah</u>, 187 Conn. 495, 500, 446 A.2d 1075 (1982).</p>	<p>“The law on resulting trusts in Connecticut is well settled. Resulting trusts arise by operation of law at the time of a conveyance when the purchase money for property is paid by one party and the legal title is taken in the name of another.”</p>
<p>Steinmetz v. Ledoux, No. 563889 (Conn. Super. Ct., New London, Apr. 22, 2004), 2004 WL 1050858.</p>	<p>“The plaintiff, Pamela S. Steinmetz, brought action against the defendant in four counts: breach of contract, unjust enrichment, resulting trust and conversion of personal property.”</p> <p>*****</p> <p>“The court finds that the plaintiff has failed to meet her burden of proof that she contributed anything toward the house or toward the mortgage, taxes and interest payments over the course of the nine years of the parties' occupancy. The plaintiff's testimony is not supported by any evidence and is flatly contradicted by the defendant with respect to most of its important elements. The defendant's testimony is clear and well-documented. At best the court can find that the plaintiff made some payments, but must find that they were either repayment of loans or payment of rent and not toward ownership. The plaintiff did get the benefit of being able to live in the house for a period of nine years. Under none of the theories claimed is CT Page 6536 the plaintiff entitled to a part interest in the realty. The court finds that the plaintiff has failed to meet her burden of proof on any of the four counts alleged. Judgment must, therefore, enter for the defendant.”</p>

Section 3.4

Form and Content

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the form and content of a written cohabitation agreements
- STATUTES:**
- CONN. GEN. STAT. (2008)
§ 46b-61. Orders re children where parents live separately
- FORMS:**
- 9B AM JUR LEGAL FORMS (2002 rev.)
 - § 139:141. Nonmarital agreement—between parties living together remaining unmarried
 - § 139:142. Nonmarital agreement—between parties living together remaining unmarried—Residence owned by one party
 - § 139:143. Nonmarital agreement—between parties living together remaining unmarried—Provisions for custody and support
 - § 139:144. Nonmarital agreement—between parties living together remaining unmarried—Joint purchase of real estate
 - § 139:145. Nonmarital agreement—between parties living together remaining unmarried—Joint purchase of real estate—Another form
 - § 139:146. Nonmarital agreement—between parties living together remaining unmarried—To share residence, earnings, and accumulated property—No provision for support
 - § 139:147. Nonmarital agreement—between parties living together remaining unmarried—Parties have child
 - § 139:148. Termination of cohabitation agreement—Parties have child
 - § 139:149. Termination of cohabitation agreement—One party has child—One party to buy out other's interest in jointly owned real estate
 - §§ 139:150 - 159. Optional provisions
 - 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2004).
Chapter 100 Cohabitation Agreements
Forms 100.10 – 100.35
 - 7 WEST'S LEGAL FORMS (rev. 2d ed. 1995).
Chapter 11 Cohabitation Agreements
 - § 11.3. Cohabitation agreement—parties have children
 - § 11.4. Cohabitation agreement—parties have no children between them
 - § 11.5. Cohabitation agreement between parties with no children—Joint purchase of real estate
 - § 11.6. Cohabitation termination agreement
 - 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2007).
Chapter 65. Unmarried cohabitants
§ 65.06. SAMPLE FORM: Cohabitation agreement

§ 65.07. CHECKLIST: Provisions of a cohabitation agreement

CHECKLISTS:

- 9B AM JUR LEGAL FORMS (2002 rev.)
 - § 139:137. Form drafting guide
 - § 139:138. Form drafting guide—checklist—matters to be considered in drafting a nonmarital cohabitation agreement
- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 47. Property rights and agreements between unmarried cohabitants
 - § 47.5. Particular clauses [*suggested inclusions and alternatives*]
- 5 NICOLS CYCLOPEDIA OF LEGAL FORMS (1991).
 - § 5.555 Drafting checklist—Nonmarital cohabitation agreement
- 7 WEST’S LEGAL FORMS (rev. 2d ed. 1995).
 - Chapter 11. Cohabitation Agreements
 - § 11.2. Checklist
- 6 ARNOLD H. RUTKIN, FAMILY LAW AND PRACTICE (2007).
 - Chapter 65. Unmarried cohabitants
 - § 65.07. CHECKLIST: Provisions of a cohabitation agreement

CASES:

- Boland v. Catalano, 202 Conn. 333, 521 A.2d 142 (1987). *Cohabitation and the enforcement of contracts and agreements between parties.*
- Vibert v. Atchley, 16 Conn. L. Rptr. No. 19, 604, 1996 WL 364777 (July 8, 1996). *Bankruptcy and a signed cohabitation agreement.*

WEST KEY NUMBERS:

- Implied and Constructive Contracts #47
- Work and Labor #25

DIGESTS:

- ALR Digest: Unmarried Cohabitants
- CYNTHIA C. GEORGE AND THOMAS D. COLIN. CONNECTICUT FAMILY LAW CITATIONS: Cohabitation

TEXTS & TREATISES:

- 9B AM JUR LEGAL FORMS (2002 rev.)
 - § 139:136. Introductory comments
 - § 139:137. Form drafting guide
 - § 139:138. Form drafting guide—Checklist—Matters to be considered in drafting nonmarital cohabitation agreement
 - § 139:139. Formal requirements—Acknowledgment
 - § 139:140. Formal requirements—Statute of frauds
- 8A ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - Chapter 47. Property rights and agreements between unmarried cohabitants
 - § 47.1. In general
 - § 47.2. Agreements between unmarried couples [*includes reasons for entering into an agreement*]
 - § 47.3. Validity
 - § 47.4. Preparation and execution
 - § 47.5. Particular clauses
 - § 47.6. Separate property
 - § 47.7. Joint purchases and contracts
 - § 47.8. Enforcement of cohabitation agreements
 - § 47.9. Termination of living together agreements
- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION

AGREEMENTS AND ANTENUPTIAL CONTRACTS (2004).

Chapter 100 Cohabitation Agreements

- TONI IHARA ET AL., LIVING TOGETHER: A LEGAL GUIDE FOR UNMARRIED COUPLES (12th ed. 2004).
- 7 WEST'S LEGAL FORMS (rev. 2d ed. 1995).
Chapter 11. Cohabitation Agreements

COMPILER:

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Table 16 Sample Clauses for Cohabitation Agreements

<h1 style="margin: 0;">Sample Clauses for Cohabitation Agreements</h1>	
Arbitration	<ul style="list-style-type: none"> • Arbitration; use of AAA rules; Exclusive remedy. LINDEY §100.30
Bank Accounts	<ul style="list-style-type: none"> • Joint bank account—Payment of joint expenses, AM JUR LEGAL FORMS § 139:156 • Joint expenses; joint account; proportional contributions. LINDEY §100.23 • Separate bank accounts and credit cards. AM JUR LEGAL FORMS § 139:157
Basic Agreements	<ul style="list-style-type: none"> • AM JUR LEGAL FORMS §§ 139:135 - 149 • WEST §§ 11.3-11.5
Breach Of Agreement	<ul style="list-style-type: none"> • Breach; remedies. LINDEY §100.29
Children	<ul style="list-style-type: none"> • Agreement—parties have children. WEST §11.3 • Expenditures on behalf of children; no obligations created. Lindey §100.19 • Legal names of parties and children. AM JUR LEGAL FORMS § 139:153 • Support, maintenance, and education of children. AM JUR LEGAL FORMS § 139:152 • Visitation rights. LINDEY §100.32
Counsel	<ul style="list-style-type: none"> • Acknowledgment of representation by counsel. AM JUR LEGAL FORMS § 139:158 • Recitals; disclosure; separate counsel. LINDEY §100.11
Debts	<ul style="list-style-type: none"> • Separate property; debts. LINDEY §100.14
Disclosure	<ul style="list-style-type: none"> • Recitals; disclosure; separate counsel. LINDEY §100.11
Employment	<ul style="list-style-type: none"> • Joint contributions to household expenses; one party’s employment by other party. LINDEY §100.24

[Cont’d]

Sample Clauses (Cont'd)

Expenses	<ul style="list-style-type: none"> • Expenditures on behalf of children; no obligations created. LINDEY §100.19 • Joint bank account—payment of joint expenses. AM JUR LEGAL FORMS §139:247 • Joint contributions to household expenses; one party's employment by other party. LINDEY §100.24 • Joint expenses; joint account; proportional contributions. LINDEY §100.23 • Sole ownership of residence; effect of joint payment of expenses. LINDEY §100.17
Inheritance	<ul style="list-style-type: none"> • Designation as beneficiary of various interests; testamentary inclusion. LINDEY §100.25 • Gifts; inheritance. LINDEY §100.18 • No claim on either party's estate. AM JUR LEGAL FORMS § 139:155 • Waiver of estate claims. LINDEY §100.26
Name(s)	<ul style="list-style-type: none"> • Legal names of parties and children. AM JUR LEGAL FORMS § 139:153 • Occupancy of premises in name of one party on happening of specific events. LINDEY §100.31
Property, Joint	<ul style="list-style-type: none"> • Joint property; equal interests presumed. LINDEY §100.15 • Joint property; interests based on contribution. LINDEY §100.16 • Joint purchase of real estate. WEST §11.5 • One wage-earning party—property shared equally. AM JUR LEGAL FORMS § 139:150 <p style="text-align: right;">[cont'd]</p>

Property, Separate	<ul style="list-style-type: none"> • One wage-earning party—Property shared equally • Property to be kept separate. AM JUR LEGAL FORMS § 139:154 • Separate property, no creation of rights except in writing or specific investment. LINDEY §100.13 • Separate property; debts. LINDEY §100.14 • Sole ownership of residence; effect of joint payment of expenses. LINDEY §100.17 • Occupancy of premises in name of one party. LINDEY §100.31
Recitals	<ul style="list-style-type: none"> • Recitals; disclosure; separate counsel. LINDEY §100.11 • Recitals; intention to live together; desire to define financial arrangements; no common law marriage. LINDEY §100.10
Support	<ul style="list-style-type: none"> • No obligation to support joint resident. LINDEY §100.20 • One wage-earning party—property shared equally. AM JUR LEGAL FORMS § 139:150 • Promise to support during joint residency; effect of termination or breach. LINDEY §100.21 • Support in exchange for services; sexual services not included. LINDEY §100.22 • Waiver of right to support or other compensation. AM JUR LEGAL FORMS § 139:159
Taxes	<ul style="list-style-type: none"> • Taxes. LINDEY §100.27
Termination	<ul style="list-style-type: none"> • Termination agreement; no preexisting agreement. LINDEY §100.34 • Criteria for dividing property: use of equitable distribution concepts. LINDEY §100.35 • Termination of cohabitation agreement. AM JUR LEGAL FORMS § 139:148
Visitation	<ul style="list-style-type: none"> • Visitation rights. LINDEY §100.32

AM JUR LEGAL FORMS = 9B AMERICAN JURISPRUDENCE LEGAL FORMS (2002 rev.)

LINDEY = 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2004).

WEST = 7 WEST'S LEGAL FORMS (rev. 2d ed.1995). Chapter 11. Cohabitation Agreements.

Remedies & Enforcement

A Guide to Resources in the Law Library

SCOPE Bibliographic resources relating to the enforcement of cohabitation agreements in Connecticut

CASES:

- Boland v. Catalano, 202 Conn. 333, 521 A.2d 142 (1987).
- Burns v. Koellmer, 11 Conn. App. 375, 527 A.2d 1210 (1987).

WEST KEY NUMBERS:

- *Contracts* #112 “Immorality”
- *Implied and constructive contracts*
 - #3 unjust enrichment
 - #30 quantum meruit
- *Marriage* #54
- *Trusts* #103(1)

DIGESTS:

- ALR DIGEST: *Unmarried Cohabitants*
- CYNTHIA C. GEORGE AND THOMAS D. COLIN. CONNECTICUT FAMILY LAW CITATIONS: *Cohabitation*

ENCYCLOPEDIAS:

- 17A AM JUR 2D *Contracts* (1991).
 - § 294. Immorality—Agreement for, or between those having , illicit sexual relations; "palimony"
- *Cause Of Action By Unmarried Cohabitant To Enforce Agreement Or Understanding Regarding Support Or Division Of Property*, 8 CAUSES OF ACTION 2D 1 (1995).
 - § 32 Remedies—generally
 - § 33 Apportionment of joint property
 - § 34 Permanent or temporary support

TEXTS & TREATISES:

- 2 ALEXANDER LINDEY AND LOUIS I. PARLEY, *LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS* (2007).
 - Chapter 100 Cohabitation Agreements
 - §100.69 Termination, remedies, and defenses

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