# RECENT DEVELOPMENTS

## THE RIGHTS OF A MEXICAN CONCUBINE UNDER ARIZONA WORKMEN'S COMPENSATION LAW

*Resumen*

*El caso de* Fidel Ocoa Urquijo (fallecido), Rosa Elda Velásquez (supuesta viuda) y otros, v. Reidhead Enterprises and State Compensation Fund, *decidido en 1.981 por la Comisión Industrial de Arizona discute si, a consecuencia de la muerte de un nacional mexicano ocurrida en un accidente de trabajo mientras legalmente desempeñaba sus deberes para un empleador de Arizona, la concubina sobreviviente tiene derecho, bajo las leyes de la república de México, a reclamar las prestaciones o compensaciones laborales en su caracter de viuda, de acuerdo con la ley sobre compensaciones laborales del estado de Arizona. De conformidad con la ley mexicana, la concubina sobreviviente de una relación de concubinato tiene derecho a las compensaciones como si hubiera estado realmente casada con el concubino al momento de su muerte. Basándose únicamente en el texto de los certificados de nacimiento de los do hijos del de cuyus (nacidos de diferentes madres) los cuales describen al mayor de ellos como hijo "legitimo" y al hijo de la reclamante como "natural," el juez de la oficina administrativa dedujo que el fallecido habia estado casado previamente en forma legal y no encontró prueba documental de la disolución de tal matrimonio. Como para el derecho mexicano no puede existir una relación de concubinato si coetáneamente existe un matrimonio legalmente celebrado, el juez decidió que no podia existir una subsecuente relación de concubinato entre la reclamante y el fallecido en la república de México. Por ello, aquélla no podia considerarse con derecho a ninguna compensación laboral. El juez adicionalmente analizó dos argumentos: En primer lugar concluyó que la concubina no podia igualarse a una "viuda o esposa" de un trabajador fallecido bajo la ley de Arizona, no obstante que, para los efectos de la ley laboral, el estado de Arizona reconoce como válida una unión libre legal (esto es, un matrimonio no formalizado pero reconocido con base en la existencia de un acuerdo entre las partes de vivir como marido y mujer y denominado "common law marriage"), si en la jurisdicción en donde ella se dá se la reconoce tambien como válida.*

*En segundo lugar determinó que considerar tal concubinato como válido atentaría contra las políticas generales del estado de Arizona porque él carece de la estabilidad tanto del martimonio como de la unión libre legal o "common law marriage" y debido a que en el derecho mexicano una relación de concubinato puede terminarse a voluntad de cualquiera de las partes. Como el caso no fue apelado más allá del nivel del fallo del juez administrativo, este tipo de situaciones permanecen sin respuesta definitiva en el derecho del estado de Arizona.*

*Abstract*

*The case of* Fidel Ochoa Urquijo (deceased), Rosa Elda Velasquez (alleged widow) et al. v. Reidhead Enterprises and State Compensation Fund, *decided by the Industrial Commission of Arizona in 1981, considers whether a woman, recognized as a surviving concubine under the laws of the Republic of Mexico, is entitled to widow's benefits under the Workmen's Compensation Act of the State of Arizona (the Arizona Act) upon the death of her Mexican national "husband," when that death arose out of and in the course of his legal employment with an Arizona employer. Under Mexican law, a surviving concubine of an existing concubinage is entitled to receive the same survival benefits as a woman legally married to the deceased at the time of death. Based solely upon the wording of the birth certificates of the deceased's two children (born of different mothers) which described the eldest as "legitimate" and the claimant's child as "natural," the administrative law judge ruled that the deceased was presumed to be married to the mother of the eldest child and found no documentary proof of the dissolution of this marriage. Since by Mexican law a state of concubinacy cannot arise if there is a prior existing marriage, the judge ruled that there was no subsequent, valid concubinage between the claimant and the deceased in the Republic of Mexico; the claimant was, therefore, entitled to no benefits. The judge considered two further arguments in the case. First, he concluded that a Mexican concubine could not be equated with a "widow, spouse or wife" of a deceased employee under the Arizona Act, even though a common-law marriage, valid in the jurisdiction where consummated, is recognized as valid in Arizona for the purposes of the Arizona Act. Secondly, it was determined that a valid concubinage offends the public policy of the State of Arizona, primarily because it lacks the stability of both a ceremonial marriage and a recognized common-law marriage since, under Mexican law, a concubinage is terminable at the will of either of the parties. Because this case was not appealed beyond the level of the administrative law*

*judge, these issues are both unresolved and unreported in the State of Arizona.*

The recent case of *Fidel Ochoa Urquijo (deceased), Rosa Elda Velasquez (alleged widow) et al. v. Reidhead Enterprises and State Compensation Fund*[1] *(Fidel Ochoa Urquijo)*, brought before the Industrial Commission of Arizona, presents a unique problem. The issue is whether a woman, recognized as a surviving concubine under the laws of the Republic of Mexico, is entitled to widow's benefits under the Workmen's Compensation Act of the State of Arizona (the Arizona Act) upon the death of her Mexican national "husband," when that death arose out of and in the course of his legal employment with an Arizona employer.

The purpose of this article is to promote discussion rather than to offer an answer because, unfortunately, the problem is both unresolved and unreported.[2]

Equally unfortunate is that the writer of this article has been unable to find, in a less than exhaustive research, any Arizona or other reported American case dealing with this topic.[3] This is somewhat startling because it would seem that the situation presented should not be unusual in the field of workmen's compensation considering the number of Mexican nationals who are legally employed in the United States.[4]

The facts of this case are rather simple. The deceased, Fidel O. Urquijo, was employed in the logging industry in the State of Arizona

1. Fidel Ochoa Urquijo v. Reidhead Enterprises and State Compensation Fund, Industrial Commission of Arizona (I.C.A.) Claim No. 999-03-2354, State Compensation Fund (S.C.F.) Carrier No. 79-15478 (May 29, 1981).

2. It was fully expected that the losing party would take recourse to the appellate process. However, no appeal was filed, and the decision of the Industrial Commission Administrative Law Judge was allowed to become final. Such decisions are not reported, and, therefore, the information is available only in the Industrial Commission claim file in Phoenix, Arizona.

3. Eds. note: Upon subsequent research by this editorial staff, no reported cases were found dealing with Mexican concubinage as it applies to workmen's compensation in the United States. In *Henderson v. Travelers Insurance Co.*, 354 So. 2d 1031 (La. 1978), the Supreme Court of Louisiana held that a dependent concubine of a workman fatally injured at work may recover workmen's compensation benefits on the basis that she is a dependent member of his family and her recovery will not infringe upon any share of compensation benefits to which statutorily entitled claimants (wife, child, parent) are preferentially entitled. However, the claimant in this case was a "concubine" under definition of Louisiana law, which does not recognize the status of a "common-law wife."

4. Illegal aliens are not considered for the purpose of this article, although that subject would also make an interesting topic in the area of workmen's compensation law.

at the time he and several other employees were killed when a truck in which they were riding on the job went out of control and crashed. The first claim for benefits was made by the deceased's mother but was later withdrawn, and, in its place, a claim was made by Rosa Velasquez on the grounds that she was entitled to "widow's benefits" as a legal concubine of Fidel under Mexican law. She also made a claim for benefits on behalf of her daughter, Claudia Irasema Ochoa Velasquez. Another claim was presented by one Antonia Estrada on behalf of her daughter, Minerva Aide Ochoa Estrada. Antonia Estrada alleged that she was the legal concubine of the deceased at the time the child, Minerva, was born, although Antonia did not make a claim on behalf of herself as an alleged widow. Based upon valid documentary proof from the Republic of Mexico that both children, Claudia and Minerva, were fathered by the deceased, the State Compensation Fund (the insurer) stipulated that the children were entitled to survivors' benefits under the Arizona Act.[5] But the insurer denied the alleged widow's claim by Rosa.

The matter eventually went to hearing before Honorable William E. Smith, Administrative Law Judge of the Arizona Industrial Commission, based upon pleadings and documents contained in the Industrial Commission claim file and the testimony of two witnesses, both expert in Mexican law, Roberto Ramirez, Mexican Consul in Phoenix, Arizona, and Boris Kozolchyk, Professor of Law at the University of Arizona. The three major issues for the consideration of the judge were:

(a) Was there a valid concubinage between Rosa and the deceased under Mexican law?
(b) If there was a valid concubinage, would the applicant be entitled to workmen's compensation widow's benefits under the wording of the pertinent Arizona statute, A.R.S. § 23-1046?
(c) Assuming the answers to the foregoing were both yes, do the principles of a valid concubinacy, as the equivalent of a valid marriage, offend the public policy of the State of Arizona?

### *No Valid Concubinage Under Mexican Law*

This aspect of the case, merely of passing interest to the main thrust of this article, has an independent interest related to the use of

5. Other than for the purposes of trial strategy, this stipulation was unnecessary because Arizona Revised Statutes (A.R.S.) § 23-1064(3) conclusively presumes that a natural or adopted child under the age of eighteen is totally dependent for support upon the deceased employee. However, at this point it must be emphasized that this use of the word "natural child" is to be distinguished from the same term in the Mexican law, which will be discussed later in this article.

documentary evidence from the Republic of Mexico and the laws of interpreting such documents to establish a presumptive marriage in Mexico without the use of a Certificate of Marriage.

Both expert witnesses testified that, pursuant to Mexican law, a concubinacy relationship must be established by the cohabitation of a man and woman as a "free union" for a period of five years, or a lesser period if a child is born of the union. From affidavits of witnesses submitted into evidence, it was established that the legally required "time period" was met in the present case to establish a concubinacy relationship. In an existing concubinage, the surviving person is entitled, by Mexican law, to receive the same survival benefits as though that person had been the legally married spouse of the deceased at the time of death. According to the expert witnesses' testimony, the purpose of the law is to provide against the de facto spouse being left without a means of support.

It was the contention of the insurer that there was no concubinage because the deceased had been previously married and there was no evidence that the marriage had been dissolved under the laws of Mexico. It is axiomatic in the Republic of Mexico that there can be no concubinage, entitling a concubine to legal rights, if there is an existing marriage.[6]

The State Compensation Fund argued that there was sufficient evidence to show the existence of a prior marriage despite the absence of a marriage certificate. This contention was based solely on the wording of the two birth certificates that were introduced by the claimants to establish the paternity of the children of the deceased. The birth certificate relating to the child, Minerva, daughter of Antonia, indicated that Antonia was domiciled at the time with her "husband" and described the child, Minerva, as the "legitimate" child of that relationship; whereas the birth certificate for Claudia, the child of the alleged widow and claimant Rosa, was described in the birth certificate as the "natural" child of that relationship. Both of the experts in the law of Mexico defined the term "legitimate child" as meaning a child born of a valid, formalized Mexican marriage and that the designation "natural child" refers to a child born of a concubinacy or less. Furthermore, Mr. Ramirez testified that Mexican law requires that formal, solemnized marriage certificates or documentation be furnished at the time a birth certificate is prepared by the Civil Registry to

6. CODIGO CIVIL DEL ESTADO DE CHIHUAHUA: LEYES Y CODIGOS DE MEXICO 285 (Editorial Porrua 1978). *See also* THE CIVIL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES OF MEXICO [CIVIL CODE] 327 (O. Schoenrich & C.M. Sandoval trans. 1950) (model for the Chihuahua Code). Eds. note: For a more recent edition, see THE MEXICAN CIVIL CODE (M.W. Gordon trans. 1980).

enable a child to be designated as a "legitimate" child of a marital relationship. To rebut this point, the claimant relied upon the affidavits of three witnesses who lived in the deceased's home town of Ciudad Madera, State of Chihuahua, which stated that the deceased had never at any time been married and that the child, Claudia, was the child of the relationship between the deceased and Rosa. These affidavits also indicated that Rosa and the deceased resided together for about four years, which would have established a valid concubinacy under the laws of Mexico pursuant to article 1635 of the 1928 Civil Code.[7]

The claimant also filed a written, but unverified, letter from Antonia which disclaimed that she had ever been married to the deceased, Fidel, or to anyone else.[8]

The defense presented the averment of the mother of the deceased in her original claim for benefits which stated that her son had never been married and had no children at all. This was to cast doubt on the knowledge or veracity of the affiants, but the course of the hearing determined that this was not necessary.

The fact that was decisive on this issue, however, was the immutable character of the assertion of the birth certificates that the first child, Minerva, was the "legitimate" child of a valid, ceremonial marriage whereas the second child, Claudia, was the "natural" offspring of a lesser relationship. That, taken together with the fact that there was no documentary proof of the dissolution of the presumptive previous marriage, impelled the administrative law judge to rule that there could have been no subsequent, valid concubinage in the Republic of Mexico. Both expert witnesses testified that a state of concubinacy cannot arise if there is a prior existing marriage. Professor Kozolchyk further testified that since the only documents available to the Industrial Commission were the two birth certificates, they must be accepted as an established fact regarding "legitimate" versus "natural" childhood under the terms of article 34, *Civil Code of Sonora, Mexico.* That article reads:

> The civil status of persons is only proven with the certifications issued by the Registry. No other document, or means of proof is admissable to prove civil status, except the cases expressly exempted by law.[9]

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7. CIVIL CODE, *supra* note 5.

8. Such a document is of no avail in Arizona. It has been held that where there are two possible putative wives a disavowal by one does not qualify the other as the widow. Gamez v. Industrial Commission, 114 Ariz. 179, 559 P.2d 1094 (Ct. App. 1976) *rev. denied*, (Feb. 8, 1977). *See also* Wilson v. Wilson, 139 Neb. 153, 296 N.W. 766, 786 (1941).

9. CIVIL CODE OF SONORA, MEXICO art. 134 (1968) (the exceptions are not applicable in the instant case) (the birth of the child Minerva Aide was recorded in the State of Sonora, Mexico).

At this point the claim of the alleged concubine would have been defeated, but the administrative law judge considered the other arguments ostensibly on the assumption that the Arizona Court of Appeals or the Arizona Supreme Court might have viewed the first issue differently; a more likely explanation is that he wished to place the main issue squarely before the appellate courts.

### *A Valid Mexican Concubinacy Does Not Entitle the Survivor to Compensation Benefits Under the Arizona Statute*

The applicable Arizona statute (A.R.S. § 23–1046) setting forth those dependents entitled to workmen's compensation benefits for a survivor uses but three phrases relevant to a claim by a concubine, "surviving spouse," "widow or widower" and "husband or wife."[10] The judge must determine whether the claimant fits into one of these categories, thus entitling her to compensation benefits as a survivor under the statute.

Although the status of concubinage has its roots in the era of the ancient Roman civil law, it has never attained the dignity of a valid, ceremonial marriage or even a valid, common-law marriage. Its existence is somewhere between those recognized relationships and the occasional "one-night stand" or even a continuous, but illicit, relationship.[11] Not even in the Republic of Mexico is concubinage afforded the dignity or full rights of a valid, ceremonial marriage.[12]

Based upon a literal interpretation of A.R.S. § 23–1046, the administrative law judge in *Fidel Ochoa Urquijo* came to the conclusion that a Mexican concubine could not be equated with a "widow, spouse or wife" or a deceased employee. The status of the Mexican concubine, the judge further determined, was not affected by the Arizona case law that a ceremonial or common-law marriage valid in the jurisdiction where it was consummated is recognized as valid for the purposes of the Arizona Workmen's Compensation Act.[13] There-

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10. ARIZ. REV. STAT. ANN § 23-1046. (1981) The statute also includes parents and brothers and sisters under certain conditions. This is irrelevant to this claim. At one time the statute had a "catch-all" clause for other types of dependency, but this was declared to be unconstitutional in Moore v. Industrial Commission, 24 Ariz. App. 324, 538 P. 2d 411 (1975) and State Compensation Fund v. DeLaFuente, 18 Ariz. App. 246, 501 P.2d 422 (1972), *rev. denied*, 109 Ariz. 439, 511 P.2d 621 (1973).

11. *See* 52 AM. JUR. 2D MARRIAGE § 8 (1970).

12. I. GALINDO GARFIAS, DERECHO CIVIL 452 (1973). Professor Galindo Garfias after having previously referred to concubinage as a "peculiar method" of forming a family, states that the drafters of the legislation relating to concubinage considered marriage to be exalted. *Id.* at 451-52.

13. *Gamez*, 114 Ariz. 179, 559 P.2d 1094; Mission Insurance Company v. Industrial Commission, 114 Ariz. 170, 559 P.2d 1085 (Ct. App. 1976).

fore, he denied the claim for benefits on this ground. The judge's initial determination, that a concubine is not entitled to benefits because semantically she is not a statutory widow or wife, gives rise to the query of why such an equation is not possible.

Stated in a way other than by strict semantics, the issue is why should a concubine who has lived with the deceased, depended upon him for their mutual livelihood, and borne him a child not be entitled to benefits as a widow when her putative "husband" is killed in an accident arising out of his employment in the State of Arizona, or for that matter in any other state in the United States. The surviving concubine usually has some measure of dependency on the deceased for material support. If the concubine's relationship is recognized in the Republic of Mexico, albeit on a "second-class" basis, is she not in the same moral, legal and economic condition as her American counterpart who establishes her marriage under the common law in those jurisdictions where it is recognized? Both survivors commenced their relationship on an illicit basis. Both have presumably dedicated a portion of their lives to carrying out the same functions as a ceremonial wife, even to the extent of bearing a child or children for their mate. Consequently, if that mate loses his life while working for a foreign employer, should not the surviving concubine be entitled to the same benefits as a wife? Since even the American common-law wife has attained the same status as a ceremonial wife under the Workmen's Compensation Act of the State of Arizona, why not her Mexican counterpart?

The response to these questions by the defendant insurance carrier was that the concept of concubinage was contrary to the public policy of the State of Arizona, even though Arizona recognizes the status of common-law marriage if it was effectuated in a foreign jurisdiction that sanctions such relationships.

### *A Valid Concubinage Offends the Public Policy of the State of Arizona*

From earlier times it has been the tendency of the courts of the United States to use the term "concubine" synonymously with "mistress,"[14] and therefore, for example, refuse to consider a concu-

14. The synonymous usage of the terms probably comes from a much earlier time, *e.g.*, Succession of Stevenson, 158 So. 33 (1934); Keener v. Grand Lodge, A.O.U.W., 38 Mo. App. 543 (1889). But the best example of the early misconception of concubinacy as it is used in Mexico is the case of West v. Grand Lodge, A.O.U.W. of Texas, 14 Tex. Civ. App. 471, 37 S.W. 966 (1896), where the female companion was referred to as a "concubine" despite the fact that the male was a married man. As set forth previously, this is totally inconsistent with the Mexican Law.

bine as being included as a "dependent" for the purposes of life insurance policies. This result would be reached despite the fact of actual economic dependency. Such an analogy distorts the problem at hand since the Mexican "concubine" has more legal validity than the American "mistress."

The Arizona Court of Appeals has stated that "[t]he concept of marriage under the workmen's compensation statutes is not special, but follows the ordinary domestic relations law of this state."[15] Thus, for the purpose of the Workmen's Compensation Act, there are only two forms of a man-woman relationship recognized in the State of Arizona, i.e., the valid, ceremonial marriage and the common-law marriage that is commenced and consummated under the laws of a jurisdiction which recognizes such marriage. The "casual" or "loose" relationship between man and woman not sanctioned by law does not qualify for benefits, despite the fact that such a relationship may involve all of the indicia of a marriage, including sexual relations, the birth of children and economic dependency. The use of the term "casual" and "loose" is intentional because it is the writer's own opinion that its lack of formality is one of the most important reasons why a valid Mexican concubinage cannot legally rise to the level of a valid marriage unless and until there is legislative and judicial acceptance of the American version of the same status, i.e., man and mistress.

Even in those states that do recognize common-law and putative marriages, it has been held that a concubinage gives to the concubine no property interest, except that portion accumulated by the concubine's own labor and industry.[16] But this latter statement again incorporates the American version of a "concubine." The American status of concubine is held to a much lesser standard than that of Mexico; this is exemplified in the definition, given by the Louisiana Supreme Court, of the state of "concubinage" as being "the act or practice of cohabiting in sexual intercourse without the authority of law or legal marriage."[17]

Yet cohabitation as a concubine is within the authority of the law in the Republic of Mexico, and certain economic benefits can flow from such status. Should not that status be equated to a lawful American common-law marriage, at least from a financial point of view, as a matter of comity?

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15. *Gamez*, 114 Ariz. at 181, 559 P.2d at 1096 (citations omitted).
16. Sparrow v. Sparrow, 231 La. 966, 93 So.2d 232 (1957); Timmons v. Timmons, 222 S.W.2d 339 (Tex. Civ. App. 1949).
17. Gauff v. Johnson, 161 La. 975, 978, 109 So. 782, 783 (1926).

But public policy has a very strong influence on legislation and legal decisions in the United States. Consider the example of first cousins, domiciled in the State of Arizona, who went to the State of New Mexico and there were joined in a valid New Mexico marriage despite their blood relationship. Thereafter, they returned to the State of Arizona and lived together a number of years as husband and wife. Despite the validity of this marriage in New Mexico, the Arizona Supreme Court struck it down with the statement that "marriages performed outside these states which offend a strong public policy of the state of domicile will not be recognized as valid in the domiciliary state."[18]

But why would a concubinage, legally recognized in a foreign jurisdiction, offend the strong public policy of a state (not a domiciliary state) wherein only certain monetary rights are attempted to be enforced for the loss of a working man's earnings? The argument is because a concubinage by its very nature lacks the stability of both a ceremonial marriage and a recognized common-law marriage.

Even a common-law marriage obtains the attribute of indissolubility and, therefore, stability. American authority is that a valid common-law marriage, once judicially determined as such, is as sacrosanct as a ceremonial marriage.[19] On the other hand, under Mexican law a concubinage is terminable at the will of either of the parties. In fact, a man can "stack" one concubinacy on top of the other simply by entering into a relationship with a woman, bringing it to civil fruition by the passage of time or the birth of children and, thereafter, voluntarily abandoning it and commencing a new one. Legally, he could continue this procedure *ad infinitum*. As stated by the Mexican Supreme Court, "The concubinacy is a free union of greater or lesser duration...."[20]

Professor Ignacio Galindo Garfias, a faculty member of the National University of Mexico Law School and a leading authority on the Mexican Civil Code, exalts the status of marriage in Mexico but recognizes the popular trend of concubinage as "a peculiar method of forming a family."[21] Professor Galindo Garfias also underlines the

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18. In Re Mortenson's Estate, 83 Ariz. 87, 90, 316 P.2d 1106, 1108 (1957).

19. *See* Roy v. Industrial Commission, 97 Ariz. 98, 397 P.2d 211 (1964); Kolombatovich v. Magma Copper co., 43 Ariz. 314, 30 P.2d 832 (1934); In Re Winder's Estate, 98 Ca.2d 78, 219 P.2d 18 (Dist. Ct. App. 1950); Catlett v. Chestnut, 107 Fla. 498, 146 So. 241 (1933); Craddock's Case, 310 Mass. 116, 37 N.E.2d 508 (1941); 52 AM. JUR. 2D MARRIAGE § 53 (1970).

20. Amparo Directo 825/68, Francisco Garcia Koyoc, 3a Sala, Septima Epoca, Vol. 6, *reported and extracted in* COMPILACION MAYO DEL SEMANARIO JUDICIAL DE LA FEDERACION, Septima Epoca, vol. 1-6, Civil, 1969 at 128-29 (1972).

21. GALINDO GARFIAS, *supra* note 11, at 451.

above statement by pointing out that marriage is governed by the principles of indissolubility, except by legally sanctioned means, whereas concubinacy is subject to *ex parte* extinction at any time by the will of either of the parties without the intervention of the law.[22]

On the other hand, Frederick S. Staatz, a Washington attorney who researched the legal status of concubinage in Latin America while a comparative law student at the University of Arizona College of Law, urges that one should not confuse concubinacy with a mere adulterous liaison (which contrarily seems to be the inclination of American courts) because the Mexican Supreme Court has pointed out that one principle of concubinage is "fidelity."[23] Yet, in the same context he cites a Mexican Supreme Court decision that summarily rejected a concubine's claim because she had voluntarily "broken off" with her mate a few months before his death. This result was reached despite the fact that she had spent many "faithful" years with the deceased.[24]

### *Conclusion*

The author is of the opinion that the decision in *Gamez v. Industrial Commission*[25] clearly points to the position that the Arizona appellate courts would have taken had the matter of *Fidel Ochoa Urquijo* been presented to them. In *Gamez*, the deceased workman and the claimant were married by a priest in Mexico but failed to comply with the Mexican Civil Code and never entered into an American civil marriage when they took up residence in Tucson, Arizona. She contended she would have been entitled to certain benefits under Mexican law. The Arizona court of Appeals termed this contention "irrelevant" and continued,

> We are not herein concerned with Mexican workmen's compensation law. The only question of Mexican law which is involved is whether petitioner contracted a valid legal marriage there. The point at issue on this appeal is whether petitioner is entitled to benefits as a *widow* under Arizona law, and to do so she must qualify as having been married to the decedent....[26]

Granted there was no valid Mexican concubinage established, so the case is not exactly in point, but it certainly is indicative.

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22. *Id.* at 451-52.
23. F.S. STAATZ, CONCUBINAGE IN LATIN AMERICA 64 (1973) (unpublished manuscript available in University of Arizona College of Law Library).
24. *Id.* at 64-165.
25. *Gamez*, 114 Ariz. 179, 559 P.2d 1094.
26. *Id.* 114 Ariz. 183, 559 P.2d at 1098.

There is also the public policy issue. Despite the fleeting quality of many modern marriages and the advent of "palimony" and "galimony,"[27] it is this author's opinion that the courts are not ready to equate concubinage with marriage, no matter how valid the concubinage in the jurisdiction where it is recognized. Concubinage carries with it the specter of dissolution at whim, and the Law, being a "jealous mistress," is not about to permit a marriage to be created or destroyed without its intervention. In the meantime, concubinage probably will be viewed in the same light as the marriage in *In Re Duncan's Estate*[28] which was based upon an antenuptial agreement providing for an uncontested divorce at the option of the husband, where the court rather vehemently stated,

> The contract is [utterly] void. It is against public policy. The marriage relation lies at the foundation of our civilization. Marriage promotes public and private morals, and advances the well-being of society and social order. The sacred character of the marriage relation is indissoluble, except as authorized by legislative will and by the solemn judgment of a court. It cannot be annulled by contract, or at the pleasure of the parties.[29]

—*John A. Flood**

27. This article has intentionally refrained from involving these recent American cases since those decisions alone would make a lengthy but interesting article on the same subject being considered here.

28. In Re Duncan's Estate, 87 Colo. 149, 285 Pac. 757, 70 A.L.R. 824 (1930).

29. *Id.* 87 colo. at 152, 285 Pac. at 758, 70 A.L.R. at 826.

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