Case Note

PROPERTY LAW—He Buys the House and She Keeps Half: The Wyoming Supreme Court's Approach to Cohabitation and Cotenancy; *Hofstad v. Christie*, 240 P.3d 816 (Wyo. 2010)

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Introduction

In *Jude the Obscure*, Thomas Hardy's quintessential bad woman, Arabella Donn, discusses the advantages of marriage over cohabitation. She observes pragmatically:

> Life with a man is more businesslike after it, and money matters work better. And then, you see, if you have rows, and he turns you out of doors, you can get the law to protect you, which you can't otherwise, unless he half runs you through with a knife, or cracks your noddle with a poker. And if he bolts away from you—I say it friendly, as woman to woman, for there's never any knowing what a man med do—you'll have the sticks o' furniture, and won't be looked upon as a thief.[1]

Cohabitants may have fared poorly in Hardy's novel, but if Arabella were cohabiting in Wyoming today, she would find the law much friendlier.

Wyoming does not recognize the doctrine of common-law marriage, but the Wyoming Supreme Court has repeatedly enforced valid agreements between cohabitants, including agreements to divide real and personal property.[2] Moreover, in the absence of express agreements, the court makes equitable remedies available to protect the lawful expectations of cohabiting parties.[3]

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[1] Thomas Hardy, Jude the Obscure 212 (Norman Page ed., Norton 1999) (2d ed. 1912).

[2] Berg v. Hayward (*In re* Reeves' Estate), 133 P.2d 503, 504 (Wyo. 1943) ("[C]ommon law marriages entered into in this state are not valid.") (citing Roberts v. Roberts (*In re* Roberts' Estate), 133 P.2d 492 (Wyo. 1943)); *see, e.g.*, Allen v. Anderson, 253 P.3d 182, 183–84 (Wyo. 2011) (affirming the distribution of a formerly cohabiting couple's real and personal property pursuant to a settlement agreement between the parties); Kinnison v. Kinnison, 627 P.2d 594, 595–96 (Wyo. 1981) (affirming the enforcement of an oral agreement between cohabitants in settlement of the woman's equitable claims).

[3] *See* Shaw v. Smith, 964 P.2d 428, 438 (Wyo. 1998) ("We note that the theor[y] of . . . quantum meruit [has] been available to cohabiting parties in Wyoming since 1980 . . . ."); *infra* notes 21–23 and accompanying text.

In *Hofstad v. Christie*, the court considered a dispute between former cohabitants Jerald Hofstad and Cathryn Christie who owned a house as tenants in common.[4] Hofstad had contributed significantly more money toward acquiring the house,[5] but the Wyoming Supreme Court adopted the *Law of Property* rule, which presumes cotenants share their property equally—despite unequal contributions—unless "there is neither a family relationship among the co-tenants nor any evidence of donative intent" by the excess contributor.[6] Finding evidence of a family relationship between the parties and donative intent by Hofstad, the court awarded Christie an equal share of the house.[7]

Other courts applying the *Law of Property* rule have interpreted the rule as establishing an *irrebuttable* presumption of equal shares between cotenants if they share a family relationship or if the excess contributor evinced donative intent.[8] Such an interpretation essentially grants legal status to cohabiting cotenants who share a family relationship because such a relationship requires a court to divide their property equally, irrespective of unequal contributions or the parties' intent.[9] However, the Wyoming Supreme Court did not interpret the *Law of Property* rule as granting legal status to cohabitants in a family relationship.[10]

Instead, this note demonstrates that the *Hofstad* court rejected a rigid interpretation of the *Law of Property* rule in favor of a flexible analytical framework under which the nature of the relationship between cotenants is not dispositive but merely relevant to establishing their intent.[11] This note further argues that future Wyoming courts, rather than retaining the original language of the *Law of Property* rule, should adopt an alternative formulation that comports with the reasoning in *Hofstad* and comports with established Wyoming law.[12] Lastly, this note examines the state of Wyoming cotenancy law after *Hofstad* and contends the *Hofstad* court, far from reviving the doctrine of common-law marriage or otherwise recognizing legal status for cohabitants, affirmed the longstanding Wyoming principles that cohabitants are bound by their promises and that no relationship between cotenants establishes an irrebuttable presumption of equal ownership.[13]

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[4] 240 P.3d 816, 817–19 (Wyo. 2010).

[5] *Id.* at 819.

[6] *Id.* at 818–19; *see infra* note 42 and accompanying text (describing the *Law of Property* rule).

[7] *Hofstad*, 240 P.3d at 822.

[8] *See infra* notes 49–53 and accompanying text.

[9] *See infra* notes 49–53, 68–75 and accompanying text.

[10] *See infra* notes 130–45, 196–202 and accompanying text.

[11] *See infra* notes 130–45, 158–61 and accompanying text.

[12] *See infra* notes 146–83 and accompanying text.

[13] *See infra* notes 184–206 and accompanying text.

BACKGROUND

Increases in Cohabitation

Cohabitation—a man and woman living together in a sexual relationship without being married—is increasingly common in the United States.[14] In 1988, only 5.2% of women between the ages of fifteen and forty-four were actively cohabiting and only 33.5% had cohabited in the past.[15] By 2002, these percentages had risen to 9.1% and 50.0%, respectively.[16] In fact, the 2010 Census revealed that almost 6.0% of American households included a cohabiting couple.[17] The prevalence of cohabitation in Wyoming was even greater, at nearly 6.2% of all households.[18]

In 1976, the California Supreme Court noted the sharp increase in cohabiting relationships and the difficulty faced by courts in determining the property rights of former cohabitants.[19] The continuing increase in the number of cohabiting relationships suggests that court's observations are even truer today, both nationwide and in Wyoming.

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[14] Paula Y. Goodwin et al., *Marriage and Cohabitation in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth*, NAT'L CTR. FOR HEALTH STATISTICS, VITAL AND HEALTH STATISTICS SER. 23 NO. 28, 1, 4 (2010), http://www.cdc.gov/nchs/data/series/sr_23/sr23_028.pdf. For purposes of this note, "cohabitants" and "cohabitation," unless otherwise stated, refer exclusively to opposite-sex couples.

[15] Kathryn A. London, *Cohabitation, Marriage, Marital Dissolution, and Remarriage: United States, 1988*, NAT'L CTR. FOR HEALTH STATISTICS, ADVANCE DATA NO. 194, at 1–2 (1991), http://www.cdc.gov/nchs/data/ad/ad194.pdf.

[16] Goodwin, *supra* note 14, at 17, 27.

[17] *American Fact Finder: Unmarried-Partner Households by Sex of Partner in the United States and Wyoming*, U.S. CENSUS BUREAU (2010), http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/10_1YR/B11009/0100000US|0400000US56 (displaying data from American Community Survey 1-Year Estimates) (last visited Nov. 27, 2011). This is up from approximately 5.2% of households in 2000. Tavia Simmons and Martin O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, U.S. CENSUS BUREAU (Feb. 2003), http://www.census.gov/prod/2003pubs/censr-5.pdf.

[18] *American Fact Finder: Unmarried-Partner Households by Sex of Partner in the United States and Wyoming*, *supra* note 17.

[19] Marvin v. Marvin, 557 P.2d 106, 110–11 (Cal. 1976) (en banc). In *Marvin*, the court held that lawful agreements between cohabitants are enforceable and that in the absence of an express agreement, courts may look to equitable remedies to protect the lawful expectations of the parties. *Id.* at 122–23.

Prior Wyoming Cohabitation Cases

The Wyoming Supreme Court abolished the doctrine of common-law marriage in 1943.[20] Since then, the court has applied traditional principles of contract law in resolving disputes between cohabitants. In *Kinnison v. Kinnison*, the court enforced an oral agreement between former cohabitants in settlement of the woman's quantum meruit and unjust enrichment claims.[21] In *Shaw v. Smith*, the court remanded for a jury to consider whether former cohabitants had entered into a valid oral agreement and resolve the plaintiff's unjust enrichment claim.[22] In *Adkins v. Lawson*, the court held that the plaintiff could not recover through an unjust enrichment claim the value of household services performed during a period of cohabitation because she could not demonstrate that she had expected to be paid for those services.[23] And in *Bereman v. Bereman*, the court held an alleged oral agreement between former cohabitants void under the Statute of Frauds, explaining that cohabitants "can enter into binding contracts," but that "purported 'agreements' between such couples are [not] exempt from compliance with Wyoming's law of contracts."[24]

In *Schulz v. Miller*, the Wyoming Supreme Court considered the case of a cohabiting couple who purchased a "home site lot" via a purchase agreement identifying the purchasers as "Stephen P. Schulz & Polly L. Miller" and a deed listing the grantees as "Stephen P. Schulz, a single man, and Polly L. Miller, a single woman, as joint tenants with right of survivorship."[25] Schulz paid the entire purchase price.[26] The parties subsequently separated, and the trial court awarded Miller a fifty-percent interest in the lot.[27] The Wyoming Supreme Court affirmed, holding the "two litigants agreed how title was to be vested: 'Stephen P. Schulz

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[20] Berg v. Hayward (*In re* Reeves' Estate), 133 P.2d 503, 504 (Wyo. 1943) (declaring that "common law marriages entered into in this state are not valid") (citing Roberts v. Roberts (*In re* Roberts' Estate), 133 P.2d 492 (Wyo. 1943)).

[21] 627 P.2d 594, 595–96 (Wyo. 1981). In *Kinnison*, the Wyoming Supreme Court held that agreements between cohabitants are enforceable unless sexual services are the only consideration. *Id.* at 595 (citing *Marvin*, 557 P.2d at 113).

[22] 964 P.2d 428, 436–37 (Wyo. 1998). In *Shaw*, the contract issue was whether "a jury could reasonably determine that [the parties] bargained for his promise to provide financial protection and make her a partner in life in exchange for [her] efforts on behalf of [his] family and business interests." *Id.* at 436.

[23] 892 P.2d 128, 131–32 (Wyo. 1995).

[24] 645 P.2d 1155, 1158–59 (Wyo. 1982) (citing *Kinnison*, 627 P.2d at 595). The agreement in *Bereman* came within the Statute of Frauds because, "according to [the woman's] own testimony the agreement was a three-year plan." *Id.* at 1159.

[25] 837 P.2d 71, 72–73 (Wyo. 1992).

[26] *Id.* at 73.

[27] *Id.* at 72.

and Polly L. Miller.' By this document, each became an equal co-owner."[28] The *Schulz* court rested its holding on contract law principles, emphasizing *Schulz* was "not a real estate gift conveyance case where the donor subsequently questions the extent of his gift by deed."[29]

Prior Wyoming Cotenancy Cases

In cases considering the ownership shares of cotenants, the Wyoming Supreme Court has established several principles of cotenancy law.[30] When the instrument of conveyance expressly assigns each party a certain share in the property, the instrument controls and parol evidence may not be admitted to contradict it.[31] If the instrument of conveyance does not otherwise specify, the parties are presumed to own equal shares, but this presumption may be rebutted by parol evidence of unequal contributions toward the property.[32]

In cases involving married cotenants who subsequently disputed their respective shares in jointly owned property, the Wyoming Supreme Court has repeatedly held "[t]hat when title to real estate was taken in the names of both spouses but only one spouse paid for it, there [is] a rebuttable presumption that a fifty percent interest was intended as a gift to the nonpaying spouse."[33] In marital

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[28] *Id.* at 74. Justice Cardine dissented:

> The purchase offer and acceptance agreement indicates only that appellant and appellee are the purchasers of this real estate. From the writing itself, it is impossible to ascertain who should pay, whether there was a gift, or how title should be held. Appellant was lawfully entitled to introduce parole evidence, and the district court should have allowed it to arrive at the intent of the parties to this transaction.

Id. at 78 (Cardine, J., dissenting).

[29] *Id.* at 76 (majority opinion).

[30] *See infra* notes 31–34 and accompanying text. "'[T]enancy' is the possession of real or personal property by right or title, especially under a conveying instrument such as a deed or will. A 'cotenancy' is a tenancy under more than one distinct title, but with unity of possession." 20 AM. JUR. 2D *Cotenancy and Joint Ownership* § 1 (2005) (citations omitted).

[31] *See* Bixler v. Oro Mgmt., 86 P.3d 843, 850 (Wyo. 2004) ("No parol evidence can be considered to determine what property rights were granted because the deed provides the answer."). In *Bixler*, the Wyoming Supreme Court construed its earlier decision in *Schulz v. Miller* as holding that, because "the terms of the deed were unambiguous . . . parol evidence could not be considered to determine the parties' rights to the property." *Id.* (citing *Schulz*, 837 P.2d at 75).

[32] *Id.* at 851. In *Binning v. Miller*, the Wyoming Supreme Court held that, "in the absence of an agreement to the contrary, joint purchasers of an estate [hold] shares therein in proportion to their contribution to the purchase price." 102 P.2d 64, 77 (Wyo. 1940) (citation omitted). In *Bixler*, the Wyoming Supreme Court construed *Binning* as consistent with the principle that evidence of unequal contributions may rebut the threshold presumption of equal shares between cotenants. *Bixler*, 86 P.3d at 850–51.

[33] DeJohn v. DeJohn, 121 P.3d 802, 809 (Wyo. 2005) (quoting Barton v. Barton, 996 P.2d 1, 4 (Wyo. 2000)); *see* Tyler v. Tyler, 624 P.2d 784, 785–86 (Wyo. 1981). In Wyoming, marital property disputes are also governed by statute:

cotenancy cases, the court has regularly disposed of property based on the intent of the parties.[34]

Bixler v. Oro Management *and the* Law of Property *Rule*

In the 2004 case *Bixler v. Oro Management*, the Wyoming Supreme Court adopted a new cotenancy rule that framed its discussion in *Hofstad v. Christie* six years later.[35] In *Bixler*, the parties acquired property via warranty deed as tenants in common, intending to develop the property for mining.[36] The parties contributed equal amounts toward the purchase price.[37] Many details of the parties' agreement were never memorialized in writing, and after various disputes between the parties, the plaintiff filed a suit seeking partition of the property.[38] The district court held that while the plaintiff was entitled to an equal share of the surface estate, he owned no interest in the mineral estate based on a prior agreement between the parties.[39]

On appeal, the Wyoming Supreme Court held that the prior agreement had merged into the deed; thus, the deed itself controlled the parties' respective interests.[40] The court found the deed unambiguous and awarded the plaintiff a share of the mineral estate.[41]

> In granting a divorce, the court shall make such disposition of the property of the parties as appears just and equitable, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired and the burdens imposed upon the property for the benefit of either party and children.

WYO. STAT. ANN. § 20-2-114 (2011).

[34] *See DeJohn*, 121 P.3d at 805–07, 809 (affirming the award of jointly owned property to the husband in a divorce proceeding because this property had been acquired using assets he acquired prior to the marriage and specifically told his wife he did not intend to share with her); *Barton*, 996 P.2d at 4–5 (finding that a husband who had purchased property with his assets and titled it in his wife's name intended to give it to her and awarding the property to the wife in a divorce proceeding); *Tyler*, 624 P.2d at 786–87 (affirming the award of an equal interest in a jointly owned house to the wife in a divorce proceeding, even though the husband paid the entire purchase price, based on the finding that he intended to share the house equally with her).

[35] *Bixler*, 86 P.3d at 850; *see infra* notes 42–44, 103 and accompanying text.

[36] 86 P.3d at 845–46. "A tenancy in common is a form of ownership in which each cotenant owns a separate fractional share of undivided property. The property may be owned in equal or unequal undivided shares, with each person having an equal right to possess the whole property, but no right of survivorship." 20 AM. JUR. 2D *Cotenancy and Joint Ownership* § 31 (2005) (citations omitted).

[37] *Bixler*, 86 P.3d at 851. The plaintiff "paid $365,000 of the $700,000 purchase price." *Id.*

[38] *Id.* at 846.

[39] *Id.* at 847.

[40] *Id.* at 849–50.

[41] *Id.*

In dictum, however, the *Bixler* court adopted a rule from the treatise, *The Law of Property* (the *Law of Property* rule):

> If the instrument does not specify the shares of each co-tenant, it will be presumed that they take equal undivided interests. However, this presumption may be rebutted by proof that the co-tenants contributed unequal amounts toward the purchase price of the property and there is neither a family relationship among the co-tenants nor any evidence of donative intent on the part of those who contributed more than their pro rata amounts toward the purchase price.[42]

The first half of the *Law of Property* rule merely restates established Wyoming law: cotenants are presumed to own equal shares in their property when the instrument of conveyance does not otherwise specify, but this presumption may be rebutted by evidence of unequal contributions toward acquiring the property.[43] The additional requirement that there be "neither a family relationship . . . nor any evidence of donative intent," however, is unique to *The Law of Property* and cases citing it.[44]

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[42] *Id.* at 850 (citing WILLIAM B. STOEBUCK ET AL., THE LAW OF PROPERTY § 5.2 (2d ed. 1993)). The *Bixler* court made inconsequential alterations to the language of the *Law of Property* rule; the exact language reads:

> If the instrument does not specify the shares of each cotenant, it will be presumed that they take equal undivided interests, but this presumption may be rebutted by proof, e.g., that the tenants contributed unequal amounts toward the purchase price of the property and there is neither a family relationship among the cotenants nor any evidence of donative intent on the part of those who contributed more than their pro rata amounts toward the purchase price.

STOEBUCK, *supra* (footnotes omitted). The *Bixler* court separately quoted the *Law of Property* rule a second time from a decision by the Southern District of the Missouri Court of Appeals but erroneously attributed the quotation to the Missouri Supreme Court. 86 P.3d at 850 (citing Christen v. Christen, 38 S.W.3d 488, 492 (Mo. S. Dist. Ct. App. 2001).

[43] *See supra* notes 31–32 and accompanying text.

[44] *Compare* STOEBUCK, *supra* note 42, *with* Hofstad v. Christie, 240 P.3d 816, 818–19 (Wyo. 2010) (citing *Bixler*, 86 P.3d at 850), *and* Hoit v. Rankin, 320 S.W.3d 761, 766–67 (Mo. W. Dist. Ct. App. 2010) (quoting Montgomery v. Roberts, 714 S.W.2d 234, 236 (Mo. E. Dist. Ct. App. 1986)), *and* Johannsen v. McClain, 235 S.W.3d 86, 87–88 (Mo. S. Dist. Ct. App. 2007) (citations omitted), *and* Clark v. Dady, 131 S.W.3d 382, 389 (Mo. W. Dist. Ct. App. 2004) (citations omitted), *and* Food Servs. Corp. v. Rheam, 145 S.W.3d 484, 493 (Mo. S. Dist. Ct. App. 2004) (citing *Christen*, 38 S.W.3d at 492), *and Christen*, 38 S.W.3d at 492 (quoting *Montgomery*, 714 S.W.2d at 236), *and* Lemay v. Hardin, 48 S.W.3d 59, 63 (Mo. W. Dist. Ct. App. 2001) (quoting *Christen*, 38 S.W.3d at 492), *and* Higgins v. Olson, 991 S.W.2d 216, 218 (Mo. E. Dist. Ct. App. 1999) (quoting *Montgomery*, 714 S.W.2d at 236), *and* Albright v. Kelley, 926 S.W.2d 207, 210 n.3 (Mo. S. Dist. Ct. App. 1996) (quoting *Montgomery*, 714 S.W.2d at 236), *and Montgomery*, 714 S.W.2d at 236 (quoting STOEBUCK, *supra* note 42, § 5.2 (1984)).

The *Bixler* court had no occasion to apply this additional requirement, of course, because the deed in question was unambiguous and, moreover, the parties had contributed equally toward purchasing the disputed property.[45] Thus, having adopted language unique to the *Law of Property* rule, the *Bixler* court offered no guidance as to how this language might apply in future cases.

The Law of Property *Rule in Missouri*

While the Wyoming Supreme Court did not apply the *Law of Property* rule in *Bixler*, several Missouri courts have applied the rule to settle property disputes between cohabitants and other cotenants.[46] Other than Wyoming, Missouri appears to be the only jurisdiction to have cited the unique "family relationship . . . donative intent" language of the *Law of Property* rule verbatim.[47] The Missouri Courts of Appeals are currently divided as to the interpretation of this language.[48]

Most Missouri courts state the original language of the rule verbatim. Under this interpretation, the presumption that cotenants share equal ownership of their property "may be rebutted by proof that the cotenants contributed unequal amounts toward the purchase price."[49] But if the court finds a family relationship between the parties or donative intent by the excess contributor, the presumption of equal shares becomes irrebuttable.[50]

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[45] *Bixler*, 86 P.3d at 848–51.

[46] *E.g.*, Hoth v. Hoth, 339 S.W.3d 540, 541–42 (Mo. S. Dist. Ct. App. 2011); *Christen*, 38 S.W.3d at 492; *Montgomery*, 714 S.W.2d at 236.

[47] *See supra* note 44. Courts in other jurisdictions, without citing *The Law of Property*, have adopted similar language. *E.g.*, Dern v. Dern (*In re* Estate of the Dern Family Trust), 928 P.2d 123, 132 (Mont. 1996) ("Where cotenants are related or cohabit and intend to confer equal shares as a gift to the other cotenant despite unequal contribution the property must be divided in equal shares."); Sack v. Tomlin, 871 P.2d 298, 304 (Nev. 1994) ("[U]nequal contributions toward acquisition of property by cotenants who are not related and show no donative intent can rebut the presumption of equal shares." (citations omitted)); *infra* note 58 and accompanying text (discussing the source cases for the *Law of Property* rule).

[48] *See infra* notes 49–67 and accompanying text.

[49] *See Montgomery*, 714 S.W.2d at 236 (quoting STOEBUCK, *supra* note 42, § 5.2 (1984)).

[50] *Id.* (holding that the presumption of equal ownership may only be rebutted by evidence of unequal contribution if "there is neither a family relationship among the co-tenants nor any evidence of donative intent"); *see Christen*, 38 S.W.3d at 492 ("[U]nequal contribution is irrelevant in determining the joint tenants' respective shares when there is a family relationship between the tenants or when there is evidence of donative intent." (citations omitted)). Recently, considering a dispute between former cohabitants Michael and Nora, the Southern District of the Missouri Court of Appeals reformulated the "verbatim" interpretation as a three-part test:

> As unmarried co-grantees by deed, Nora and Michael held the property as tenants in common. Nora could seek partition, requiring the trial court to determine each party's interest in the property. Equal co-ownership was presumed since the deed did not

In a 2010 case, a federal bankruptcy court provided perhaps the clearest application of the "verbatim" interpretation of the *Law of Property* rule.[51] In that case, a mother and her two daughters held property as joint tenants, though the mother paid the full purchase price and all costs associated with maintaining the property.[52] The bankruptcy court applied the "verbatim" interpretation and declared: "[B]ecause [the parties] have a family relationship, I need not reach the question of donative intent as to this issue. Because of the family relationship, the unequal contribution is irrelevant and the presumption of equal ownership stands."[53]

In *Hoit v. Rankin*, the Western District of the Missouri Court of Appeals rejected the "verbatim" interpretation of the *Law of Property* rule.[54] The court first argued that, under the language of the rule, the presumption of equal ownership between cotenants only becomes irrebuttable if a court finds both a family relationship and donative intent (the "modified verbatim" interpretation).[55] But having first argued that the original language of the *Law of Property* rule requires the "modified verbatim" interpretation, the court held that the original language of the *Law of Property* rule should no longer be quoted at all.[56]

Exploring the development of the rule at length, the *Hoit* court observed that, while the authors of the *Law of Property* primarily relied on the 1932 Illinois Supreme Court decision in *People v. Varel*, the *Law of Property* formulation differs significantly from the language used in *Varel*.[57] Indeed, the *Varel* court declared:

> state otherwise. Michael could rebut this presumption with substantial evidence that he (1) disproportionally contributed to the purchase, (2) had no family relationship with Nora, and (3) lacked donative intent toward her.

Hoth, 339 S.W.3d at 541 (Mo. S. Dist. Ct. App. 2011) (citations omitted) (citing Johannsen v. McClain, 235 S.W.3d 86, 87–88 (Mo. S. Dist. Ct. App. 2007)).

[51] Nelson v. Killman (*In re* Killman), Bankr. No. 08-61703, Adversary No. 09-6075, 2010 WL 743685 (Bankr. W.D. Mo. Feb. 26, 2010); *see* Hoit v. Rankin, 320 S.W.3d 761, 769 (Mo. W. Dist. Ct. App. 2010) (describing *Nelson* as realizing "the full impact" of the verbatim interpretation).

[52] *Nelson*, 2010 WL 743685 at *1–2.

[53] *Id.* at *3 nn.11–14 (citing *Johannsen*, 235 S.W.3d at 87; *Christen*, 38 S.W.3d at 492; *Montgomery*, 714 S.W.2d at 236).

[54] 320 S.W.3d at 772 ("We conclude that the principle first cited in *Montgomery* relating to 'neither family relationship nor donative intent' should no longer be cited verbatim.").

[55] *Id.* at 769–70. In making this argument, the court seems to have misread the *Law of Property* rule. The court described the rule as stating, "the presumption of equal ownership can be rebutted in the absence of *neither* a family relationship *nor* donative intent." *Id.* The *Law of Property* rule, however, does not contain the phrase "in the absence of." *See* STOEBUCK, *supra* note 42. Rather, the *Law of Property* rule states that the presumption of equal ownership may be rebutted if there is evidence of unequal contribution "and there is neither a family relationship among the co-tenants nor any evidence of donative intent." *Id.*

[56] *Hoit*, 320 S.W.3d at 772. In *Hoit*, the court discussed the 1984 edition of *The Law of Property*. *Id.* at 776.

[57] *Id.* at 767 (citing People v. Varel, 184 N.E. 209 (Ill. 1932)).

> Where title to property is taken in the name of two persons as cotenants, and their contributions to the purchase price of the property are unequal and their relationship is not such that a gift from one to the other is presumed to be intended, they will in equity be held to own the property in the proportions of their contributions to the purchase price.[58]

The *Hoit* court observed two significant differences between the *Varel* formulation of the rule and the *Law of Property* formulation.[59] First, the *Varel* court did not include the word "family" before "relationship;" the authors of *The Law of Property* apparently inserted "family" unilaterally.[60] Second, and more importantly, the language of the rule in *Varel* merely indicates that a relationship between the parties indicating donative intent is relevant to a court considering whether to permit evidence of unequal contribution to rebut the presumption of equal ownership between cotenants.[61] The *Law of Property* formulation, conversely, treats "family relationship" and "donative intent" as independent requirements that, if either is established, render the presumption of equal ownership irrebuttable as a matter of law.[62]

The *Hoit* court described the *Varel* rule as "a simple principle of evidence . . . [that] is eminently reasonable" and the *Law of Property* rule as "an inflexible litmus test."[63] In its holding, the court chose the simple principle over the litmus test:

> The presumption that co-tenants hold equal ownership shares in the face of a deed that is otherwise silent may be rebutted. Evidence relevant to rebut the presumption may include evidence that the co-tenants contributed unequally toward the purchase of the property. However, unequal contributions may be explained by evidence that the co-tenant contributing a greater amount toward purchase intended the disparity as an enforceable gift, a determination which may be influenced by evidence of the nature of the relationship among the co-tenants.[64]

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[58] *Varel*, 184 N.E. at 211 (citation omitted). In addition to *Varel*, the authors of *The Law of Property* cite three other cases as sources for the rule: *Succession of LeBlanc*, 577 So.2d 105 (La. Ct. App. 1991), *Taylor v. Taylor*, 17 N.W.2d 745 (Mich. 1945), and *Williams v. Monzingo*, 16 N.W.2d 619 (Iowa 1944). STOEBUCK, *supra* note 42, at n.31.

[59] *Hoit*, 320 S.W.3d at 767.

[60] *Id.*

[61] *Id.* at 768.

[62] *Id.*

[63] *Id.* at 768, 770.

[64] *Id.* at 772.

Thus, unlike the "verbatim" interpretation of the *Law of Property* rule, the *Hoit* "relevant evidence" formulation considers evidence of unequal contributions to be relevant even if the parties share a family relationship or one party evinced donative intent.[65]

Following the decision in *Hoit*, the Western District of the Missouri Court of Appeals now applies the "relevant evidence" formulation of the *Law of Property* rule.[66] Just a few months after *Hoit*, however, the Southern District of the Missouri Court of Appeals reaffirmed its adherence to the "verbatim" interpretation.[67] The issue has not reached the Missouri Supreme Court and remains unsettled.

Division of Property Based on Legal Status

"'[L]egal status' . . . refer[s] to a relationship between persons which, by virtue of its existence, entails legal consequences."[68] Traditionally, cohabiting couples could sometimes achieve legal status through the doctrine of common-law marriage.[69] Only a handful of states still recognize the doctrine today,[70] but Professor Goldberg has suggested that states may revive common-law marriage by extending shared property rights to couples whose relationships resemble traditional marriages and recognizing these relationships as "committed intimate relationships" and domestic partnerships.[71]

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[65] *Id.*

[66] *See* Felderman v. Zweifel, 346 S.W.3d 386, 389 (Mo. W. Dist. Ct. App. 2011) ("We frame our . . . analysis as instructed in our recent decision of *Hoit v. Rankin*." (citing *Hoit*, 320 S.W.3d at 761)).

[67] *See* Hoth v. Hoth, 339 S.W.3d 540, 541 n.3 (Mo. S. Dist. Ct. App. 2011); *supra* note 50 (discussing *Hoth*).

[68] Margaret M. Mahoney, *Forces Shaping the Law of Cohabitation for Opposite Sex Couples*, 7 J.L. & FAM. STUD. 135, 158 (2005). Marital and parent-child relationships are the quintessential family status relationships, entailing legal consequences in situations as diverse as "child custody, support, property, inheritance, taxation, social benefit programs, tort law, and criminal law." *Id.* at 158–59.

[69] Charlotte K. Goldberg, *The Schemes of Adventuresses: The Abolition and Revival of Common-Law Marriage*, 13 WM. & MARY J. WOMEN & L. 483, 490–91 (2007) (discussing the origins of common-law marriage in the United States).

[70] Mahoney, *supra* note 68, at 185; *see* R.H.S., *Validity of Common-law Marriage in American Jurisdictions*, 133 A.L.R. 758 (1941).

[71] Goldberg, *supra* note 69, at 537. Several states have granted legal status to certain cohabiting couples by passing domestic partnership laws. Lloyd T. Kelso, *Recognition of Unmarried Cohabitation as a Legal Status Worthy of Protection*, 1 N.C. FAM. L. PRACTICE § 1:5 (2011) (citing statutes from California, Hawaii, Maine, New Jersey, and Vermont). State domestic partnership statutes vary in their scope. *Compare* CAL. FAM. CODE § 297 (West 2011) (requiring one member of an opposite-sex domestic partnership to be over the age of 62), *and* HAW. REV. STAT. § 572C-4 (2011) (restricting "reciprocal beneficiary relationship[s]" to opposite-sex couples who cannot legally marry), *and* N.J. STAT. ANN. § 26:8A-4 (West 2011) (requiring both members of an opposite-sex domestic partnership to be over the age of 62), *with* ME. REV. STAT. tit. 22, § 2710 (2011) (allowing

In Washington, for example, courts apply five factors to determine whether a cohabiting relationship is "meretricious" for the purpose of property distribution.[72] Upon finding a "meretricious" relationship, a Washington court must evaluate each party's interest in property acquired during the relationship and then make a just and equitable division of the property.[73] Thus, couples in a "meretricious" relationship enjoy legal status in Washington.[74]

Similarly, cotenants who share a family relationship enjoy legal status under the "verbatim" interpretation of the *Law of Property* rule because, irrespective of their intent, their family relationship entitles them to equal shares of their property.[75] Missouri courts, however, have never found a family relationship between unmarried cohabitants under the *Law of Property* rule.[76]

Beal v. Beal *and Division of Property Based on the Intent of the Parties*

Rather than utilize a specialized principle of cotenancy like the *Law of Property* rule, the Supreme Court of Oregon in *Beal v. Beal* held that the rules of cotenancy are not dispositive in cohabitation cases.[77] In *Beal*, the court considered a dispute between parties who, following their divorce, purchased a house for $22,500 in which they continued living together for two years.[78] Though divorced, the sales

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opposite-sex domestic partnerships between unmarried adults "domiciled together under long-term arrangements" who "evidence a commitment to remain responsible indefinitely for each other's welfare"). In 2000, the American Law Institute recommended recognition of a domestic partnership status for opposite- and same-sex cohabiting couples under which cohabitants would have the same property rights as married couples upon the dissolution of their relationships. AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS & RECOMMENDATIONS §§ 6.01–.05 (2002).

[72] *In re* Marriage of Pennington, 14 P.3d 764, 770 (Wash. 2000) (en banc) (citing Connell v. Francisco, 898 P.2d 831, 834 (Wash. 1995) (en banc)). Washington courts examine cohabiting relationships for "'continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties.'" *Id.* (quoting *Connell*, 898 P.2d at 834). The *Pennington* court noted that these five factors "are neither exclusive nor hypertechnical." 14 P.3d at 770.

[73] *Pennington*, 14 P.3d at 770 (citing *Connell*, 898 P.2d at 834–35).

[74] Goldberg, *supra* note 69, at 528–34.

[75] *See supra* notes 49–53 and accompanying text (discussing the "verbatim" interpretation of the *Law of Property* rule in Missouri).

[76] *See* Hoth v. Hoth, 339 S.W.3d 540, 541 (Mo. S. Dist. Ct. App. 2011) (noting the plaintiff's concession that she and her former cohabitant lacked a family relationship); Johannsen v. McClain, 235 S.W.3d 86, 87–88 (Mo. S. Dist. Ct. App. 2007) ("[T]here exists no family relationship between [the formerly cohabiting cotenants] . . . ."); Clark v. Dady, 131 S.W.3d 382, 389 (Mo. W. Dist. Ct. App. 2004) ("[T]he record discloses that the parties were not related . . . ."); Montgomery v. Roberts, 714 S.W.2d 234, 236 (Mo. E. Dist. Ct. App. 1986) (finding "no evidence . . . [of] the existence of a family relationship" between unmarried cohabitants).

[77] 577 P.2d 507, 510 (Or. 1978) (en banc).

[78] *Id.* at 507–08.

contract listed their names as husband and wife.[79] The female cohabitant paid $1500 toward the $2000 down payment and made one of the required $213.42 monthly payments.[80] The male cohabitant paid $500 toward the down payment and made all subsequent monthly payments.[81] After two years the female cohabitant moved out of the house, and the parties maintained separate households from then on, with the male cohabitant continuing to make all monthly payments on the jointly-owned house.[82] The male cohabitant subsequently brought suit seeking a determination of the parties' respective interests in the house.[83]

The male cohabitant, who ultimately contributed more toward acquiring the house than the female cohabitant, argued that the court should fix the parties' respective interests according to the traditional rules of cotenancy.[84] The *Beal* court acknowledged these rules, observing that "when the conveyance is taken in both names the parties would be presumed to share equally, or to share based upon the amount contributed, if the contributions were traceable."[85] The *Beal* court then rejected the traditional rules of cotenancy:

> The difficulty with the application of the rules of cotenancy is that their mechanical operation does not consider the nature of the relationship of the parties. While this may be appropriate for commercial investments, a mechanistic application of these rules will not often accurately reflect the expectations of the parties.[86]

The *Beal* court then established a new rule: "[A] division of property accumulated during a period of cohabitation must be begun by inquiring into the intent of the parties, and if an intent can be found, it should control that property distribution."[87]

Having rejected the traditional rules of cotenancy in favor of a rule under which the intent of the parties controls, the *Beal* court held that during the two years of cohabitation, the parties intended to pool their resources and, thus, should be considered equal cotenants.[88] The *Beal* court likewise held that the traditional rules of cotenancy would apply to the period after the female cohabitant moved

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[79] *Id.* at 507.

[80] *Id.* at 507–08.

[81] *Id.*

[82] *Id.* at 508.

[83] *Id.* at 507, 509.

[84] *Id.* at 509.

[85] *Id.* at 510 (citations omitted).

[86] *Id.*

[87] *Id.* The Alaska Supreme Court subsequently adopted this same principle in *Wood v. Collins*. 812 P.2d 951, 956 (Alaska 1991) (citing *Beal*, 577 P.2d at 510).

[88] *Beal*, 577 P.2d at 510. The court noted, however, that "fairness dictates that [the female cohabitant] should receive credit for the $500 additional she paid on the down payment." *Id.* at

out of the house.[89] The court remanded for the trial court to properly determine the parties' respective interests in the property.[90]

PRINCIPAL CASE

Between February 1996 and July 2007, Jerald Hofstad and Cathryn Christie were involved in a relationship and lived together for extended periods of time in Casper, Wyoming.[91] Hofstad and Christie never married, but they were parents of twins born in 1996.[92] The couple, their twin sons, and Hofstad's five children from a previous relationship lived together in Hofstad's house on Monument Road in Casper from 1998 until 2005, when Hofstad and Christie temporarily separated.[93]

During this separation, Hofstad sold the Monument residence and entered into a contract to purchase a new home on Donegal Street in Casper.[94] In an effort to rekindle his relationship with Christie, "Mr. Hofstad represented to Ms. Christie that he would 'change,' they would be married within three months, that he would undergo counseling, and that Ms. Christie would be a co-owner or equal owner in the Donegal home."[95] The couple reconciled, and at closing, a warranty deed conveyed the Donegal home to "Jerald K. Hofstad and Cathryn Anne Christie, grantee(s)."[96] Hofstad made the down payment, paid the closing costs, and subsequently made all mortgage and utilities payments for the Donegal home.[97] Christie contributed money toward various improvements to the residence.[98]

The couple and their children lived together in the Donegal home from May 2005 until July 2007, when Christie moved out.[99] Christie subsequently filed suit seeking partition of the Donegal home, which the parties agreed they held

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511. It is unclear why, if the cohabitants intended to pool their resources, the female cohabitant received a credit for the excess she contributed toward the down payment, but the male cohabitant did not receive a credit for the excess he contributed toward the regular monthly payments. *Id.* at 507–08, 511.

[89] *Id.* at 511.

[90] *Id.*

[91] Hofstad v. Christie, 240 P.3d 816, 816–18 (Wyo. 2010).

[92] *Id.* at 817.

[93] *Id.* at 817–18.

[94] *Id.*

[95] *Id.* at 821.

[96] *Id.* at 818.

[97] *Id.*

[98] *Id.*

[99] *Id.*

as tenants in common.[100] Following a bench trial, the district court determined that, while Hofstad contributed substantially more money toward purchasing and maintaining the home, Christie was entitled to an equal share because Hofstad "failed to prove that there was not a family relationship or donative intent."[101] Hofstad appealed to the Wyoming Supreme Court.[102]

The Court's Opinion

In its opinion, written by Justice Hill, the Wyoming Supreme Court began its discussion by stating the *Law of Property* rule:

> [I]f the instrument does not specify the shares of each co-tenant, it will be presumed that they take equal, undivided interests. However, this presumption may be rebutted by parol evidence, such as proof that the co-tenants contributed unequal amounts toward the purchase price of the property, and there is neither a family relationship among the co-tenants nor any evidence of donative intent on the part of those who contributed more than their pro rata amounts toward the purchase price.[103]

The court noted Hofstad and Christie held the disputed property as tenants in common and that Hofstad had contributed substantially more money toward the property.[104] The court then declared, "we are faced with considering whether there is either evidence of a family relationship or evidence of donative intent on the part of Mr. Hofstad, or lack thereof."[105]

Hofstad argued that an unmarried, unrelated couple could not share a family relationship.[106] This was a matter of first impression in Wyoming, so the court "[looked] to other jurisdictions for guidance."[107] It cited three Missouri cases in which courts denied recovery for the value of household services rendered during a

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[100] *Id.* at 818–19.

[101] *Id.* at 818.

[102] *Id.*

[103] *Id.* at 818–19 (citations omitted) (citing Bixler v. Oro Mgmt., 86 P.3d 843, 850 (Wyo. 2004)). While citing the language of the *Law of Property* rule from *Bixler*, the *Hofstad* court never directly cited *The Law of Property* itself. *See Hofstad*, 240 P.3d at *passim*; *supra* note 42 and accompanying text (discussing the *Bixler* court's adoption of the *Law of Property* rule).

[104] *Hofstad*, 240 P.3d at 819.

[105] *Id.*

[106] *Id.*

[107] *Id.*

period of cohabitation because the cohabiting parties shared a "family relation."[108] The *Hofstad* court also quoted at length an Oregon Court of Appeals decision that determined a "family" must consist of more than one person.[109] The *Hofstad* court then quoted section 34-13-114(a)(x) of the Wyoming Statutes, defining a minor's family members as "the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of whole or half blood or by adoption."[110] Finally, the *Hofstad* court cited a United States Supreme Court decision as support for recognizing broader family relationships than just parents and their children.[111]

The *Hofstad* court then declared:

> Although the term "family relationship" is by no means absolute, we agree with the district court and Ms. Christie that in this case, the parties do share a family relationship, largely by way of their sharing two children. Even if Mr. Hofstad and Ms. Christie are not married, nor related by blood, that they lived together on and off for approximately ten years, all the while sharing an intimate relationship which resulted in the birth of their twins is evidence that a family relationship exists. Mr. Hofstad and Ms. Christie may never consider themselves "family," having never been married; however, their twin sons bind the four of them inextricably and forever, resulting in a family *relationship*.[112]

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[108] *Id.* (citing Wells v. Goff, 239 S.W.2d 301 (Mo. 1951) (per curiam); Johnston v. Estate of Phillips, 706 S.W.2d 554, 556 (Mo. Ct. App. 1986); Manning v. Driscoll's Estate, 174 S.W.2d 921 (Mo. Ct. App. 1943)). The *Hofstad* court probably could have cited a Wyoming case for this same proposition. *See* Adkins v. Lawson, 892 P.2d 128, 131 (Wyo. 1995) ("The estate claims that under the fourth element [the female cohabitant] cannot recover for unjust enrichment because she cared for [the male cohabitant] in a gratuitous family relationship. We agree."). The *Hofstad* court did not cite *Adkins*, however. *See Hofstad*, 240 P.3d at *passim*.

[109] *Hofstad*, 240 P.3d at 819–20 (citing Empl. Dep't v. Stock Secrets, Inc., 150 P.3d 1090, 1092 (Or. Ct. App. 2007)).

[110] *Id.* at 820 (quoting WYO. STAT. ANN. § 34-13-114(a)(x) (2009)).

[111] *Id.* (citing Moore v. City of E. Cleveland, 431 U.S. 494, 543 (1977)). In *Moore*, a grandmother who lived with her son and two grandsons, who were first cousins, was charged with violating an East Cleveland housing ordinance that restricted "occupancy of a dwelling unit to members of a single family." 431 U.S. at 495–96. Recognizing the "tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children," a plurality of the Court held that "the choice of relatives in this degree of kinship to live together may not lightly be denied by the State." *Id.* at 505–06. The *Hofstad* court's pinpoint citation to page 543 of the Supreme Court's opinion, a passage of Justice White's dissent, may be a typographical error. *See Moore*, 431 U.S. at 543 (White, J., dissenting).

[112] *Hofstad*, 240 P.3d at 820.

Having determined that Hofstad and Christie shared a family relationship, the court next considered evidence of donative intent by Hofstad.[113] Hofstad argued that Christie could only receive an equal share of the disputed house if she "actually prove[d] that a gift of one-half of the value of the home was given to her."[114] In other words, he argued that whatever the parties might have implicitly intended, only express donative intent would entitle her to an equal share under the *Law of Property* rule.[115] This was also a matter of first impression in Wyoming.[116]

Again looking to other jurisdictions, the *Hofstad* court discussed two decisions from Alaska.[117] The court then borrowed a passage from the Oregon Supreme Court's decision in *Beal v. Beal*:

> Using the rules of cotenancy, when the conveyance is taken in both names, the parties would be presumed to share equally or to share based upon the amount contributed, if the contributions were traceable (rebuttable by donative intent or a family relationship). Such rules of cotenancy could also result in requiring a showing of who paid various items, such as taxes, mortgage payments, or repairs. The difficulty with the application of the rules of cotenancy is that their mechanical operation does not consider the nature of the relationship of the parties. While this may be appropriate for commercial investments, a mechanistic application of these rules will not often accurately reflect the expectations of the parties.[118]

The *Hofstad* court subsequently discussed *Beal* and ultimately declared, "we agree with *Beal* that property accumulated before separation should be divided by determining the express or implied intent of the parties."[119] Thus, the Wyoming Supreme Court rejected Hofstad's argument that only express donative intent should entitle Christie to an equal share of the disputed house.[120]

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[113] *Id.*

[114] *Id.*

[115] *See id.*

[116] *Id.*

[117] *Id.* (citing D.M. v. D.A., 885 P.2d 94, 97 (Alaska 1994); Wood v. Collins, 812 P.2d 951, 957 (Alaska 1991)).

[118] *Id.* at 820–21 (citations omitted). The *Hofstad* court inserted the phrase "(rebuttable by donative intent or a family relationship)," but otherwise inserted this passage verbatim from *Beal v. Beal*. 577 P.2d 507, 510 (Or. 1978) (en banc).

[119] *Hofstad*, 240 P.3d at 821.

[120] *See supra* notes 114–15 and accompanying text.

In considering both the express and implied intent of the parties, the *Hofstad* court noted that prior to purchasing the disputed house, Hofstad promised that "Christie would be a co-owner or equal owner" of the house if she agreed to resume their relationship.[121] Likewise, the court found "as conclusive evidence of Mr. Hofstad's intent . . . [that] he put Ms. Christie's name on the . . . deed after they rekindled their relationship."[122]

The court then granted Christie an equal share of the disputed house because, "[g]iven the parties' children and living situation over the course of the past ten years, a family relationship existed. Furthermore, given the circumstances surrounding the purchase of [the disputed house] and the parties' reconciliation, evidence of donative intent existed."[123]

ANALYSIS

In *Hofstad v. Christie*, the Wyoming Supreme Court correctly held that the parties owned equal shares of the disputed house. In reaching this holding, however, the court rejected a rigid interpretation of the *Law of Property* rule.[124] Instead, the *Hofstad* court established a flexible analytical framework under which a court's determination of the express or implied intent of the cotenants, informed by the nature of their relationship, controls the division of their property.[125] Therefore, rather than stating the *Law of Property* rule verbatim, future Wyoming Courts should adopt the "relevant evidence" formulation of the rule.[126] This formulation accurately synthesizes the reasoning of the *Hofstad* court.[127] Moreover, prior Wyoming Supreme Court decisions involving cohabitants and married cotenants support the "relevant evidence" formulation.[128] Thus, in the final analysis, *Hofstad* established an intent-based framework for analyzing cotenancy disputes while preserving the Wyoming Supreme Court's longstanding recognition that, while cohabitants are bound by their promises and conduct, no relationship between cotenants establishes an irrebuttable presumption of equal ownership.[129]

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[121] *Hofstad*, 240 P.3d at 821.

[122] *Id.*

[123] *Id.* at 822.

[124] *See infra* notes 130–45 and accompanying text.

[125] *See infra* notes 157–61 and accompanying text.

[126] *See infra* notes 146–83 and accompanying text.

[127] *See infra* notes 146–64 and accompanying text.

[128] *See infra* notes 165–83 and accompanying text.

[129] *See infra* notes 184–206 and accompanying text.

The Hofstad *Court Rejected a Rigid Interpretation of the* Law of Property *Rule*

An argument that the Wyoming Supreme Court applied the rigid "verbatim" interpretation of the *Law of Property* rule in *Hofstad*, though incorrect, is not entirely unreasonable. On its face, the language of the rule suggests that a family relationship between cotenants establishes an irrebuttable presumption that they share their property equally.[130] And indeed, the *Hofstad* court declared it was "faced with considering whether there is *either* evidence of a family relationship *or* evidence of donative intent."[131] This declaration could be read as suggesting that, even in the absence of donative intent by Hofstad, the court's finding of a family relationship between the parties would have been sufficient to award Christie an equal share of the disputed house.[132] Under this reading of *Hofstad*, future cohabiting cotenants found to have a family relationship—indicated by long-term cohabitation, an intimate relationship, and especially shared children[133]—would share their property equally, irrespective of intent or unequal contributions.[134] Thus, cohabitants in a family relationship would enjoy legal status in Wyoming.[135]

This reading of *Hofstad* is incorrect, however, because despite stating the *Law of Property* rule verbatim, the Wyoming Supreme Court did not apply the "verbatim" interpretation of the rule.[136] Nothing suggests the *Hofstad* court intended to follow the Missouri "verbatim" interpretation since the Wyoming Supreme Court cited no cases in which Missouri courts applied the *Law of Property* rule.[137] Moreover,

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[130] *See* Nelson v. Killman (*In re* Killman), Bankr. No. 08-61703, Adversary No. 09-6075, 2010 WL 743685 (Bankr. W.D. Mo. Feb. 26, 2010) (holding that "[b]ecause of the family relationship [between the cotenants], the unequal contribution is irrelevant and the presumption of equal ownership stands"); Hoit v. Rankin, 320 S.W.3d 761, 786 (Mo. W. Dist. Ct. App. 2010) (observing that the language of the *Law of Property* rule "reads like an irrebuttable presumption").

[131] Hofstad v. Christie, 240 P.3d 816, 819 (Wyo. 2010) (emphasis added).

[132] *See id.* At least one major secondary resource has adopted this reading of *Hofstad*, offering the following summary of the case:

> Cotenant, who had lived in home with her partner on and off for ten years and with whom she had two children, but to whom she was never married, shared a "family relationship" with the partner *so as to defeat the partner's ability to rebut the presumption*, in partition action, of equal division between cotenants, even though the partner made the sole contribution toward the purchase price of the home.

20 AM. JUR. 2D *Cotenancy and Joint Ownership* § 117 (Supp. 2011) (citing *Hofstad*, 240 P.3d 816) (emphasis added).

[133] *Hofstad*, 240 P.3d at 820; *see supra* text accompanying note 112.

[134] *See supra* note 130.

[135] *See supra* notes 68–75 and accompanying text (discussing division of property based on legal status relationships).

[136] *See infra* notes 137–40 and accompanying text.

[137] *See Hofstad*, 240 P.3d at *passim*. The Wyoming Supreme Court was almost certainly aware of these Missouri cases because, in *Bixler v. Oro Management*, the court quoted the *Law of Property* rule verbatim from a decision by the Southern District of the Missouri Court of Appeals. 86 P.3d

contrary to the "verbatim" interpretation, the Wyoming Supreme Court did not treat the family relationship between Hofstad and Christie as sufficient to award Christie an equal share of the disputed house; rather, the court considered donative intent by Hofstad even after finding a family relationship.[138]

Furthermore, the reasoning underlying the *Hofstad* court's application of the *Law of Property* rule forecloses any argument that the court applied the "verbatim" interpretation. Awarding equal shares of jointly owned property based solely on a family relationship, without considering unequal contributions or the parties' intent, would contradict the *Hofstad* court's statement that "a mechanistic application of [the rules of cotenancy] will not often accurately reflect the expectations of the parties."[139] And awarding equal shares based solely on a family relationship cannot be reconciled with the court's holding that "property accumulated before separation should be divided by determining the express or implied intent of the parties."[140]

Likewise, the reasoning underlying the decision in *Hofstad* forecloses a potential argument that the court applied the "modified verbatim" interpretation of the *Law of Property* rule, under which cotenants are irrebuttably presumed to share their property equally if a court finds both a family relationship and donative intent.[141] Unlike the "verbatim" interpretation, the "modified verbatim" interpretation would be consistent with the *Hofstad* court's considering donative intent even after finding a family relationship.[142] But the "modified verbatim" interpretation, given its potential for an irrebuttable presumption, is inconsistent with the court's rejection of "mechanistic" cotenancy rules.[143] Moreover, under the "modified verbatim" interpretation, the outcome in a cotenancy dispute might depend on whether the parties share a family relationship, irrespective of their intent.[144] This contradicts the *Hofstad* court's holding that the intent of the parties controls, and thus, *Hofstad* does not support the "modified verbatim" interpretation of the *Law of Property* rule.[145]

843, 850 (quoting Christen v. Christen, 38 S.W.3d 488, 492 (Mo. S. Dist. Ct. App. 2001)). Both Hofstad and Christie cited *Bixler* in their briefs, but neither cited any Missouri case applying the *Law of Property* rule. *See* Brief of Appellant Jerald Korwin Hofstad at ii, *Hofstad*, 240 P.3d 816 (No. S-09-0246), 2010 WL 1367657; Brief of Appellee at ii–iii, *Hofstad*, 240 P.3d 816 (No. S-09-0246), 2010 WL 1367656.

[138] *Hofstad*, 240 P.3d at 820.

[139] *Id.* at 821.

[140] *Id.*

[141] *See supra* note 55 and accompanying text (discussing the "modified verbatim" interpretation).

[142] *Hofstad*, 240 P.3d at 820.

[143] *Id.* at 821.

[144] *See* Hoit v. Rankin, 320 S.W.3d 761, 769–70 (Mo. W. Dist. Ct. App. 2010) (discussing the "modified verbatim" interpretation of the *Law of Property* rule).

[145] *Hofstad*, 240 P.3d at 821.

The "Relevant Evidence" Formulation is Consistent with Hofstad

Only two Wyoming Supreme Court decisions have cited the language of the *Law of Property* rule verbatim.[146] In *Bixler v. Oro Management*, the court merely quoted the rule in dictum.[147] In *Hofstad*, the court quoted the rule from *Bixler* but clearly rejected the "verbatim" interpretation of the rule.[148] Thus, the original language of the *Law of Property* rule has no precedential value in Wyoming, and to avoid the "verbatim" interpretation, future Wyoming courts should not state the original language of the rule.[149] Instead, Wyoming courts should adopt the "relevant evidence" formulation of the *Law of Property* rule devised by the Western District of the Missouri Court of Appeals in *Hoit v. Rankin*.[150]

As a threshold matter, the decision in *Hoit v. Rankin* was released just nine days before the decision in *Hofstad.*[151] Thus, while the Wyoming Supreme Court was almost certainly aware of Missouri cases applying the "verbatim" interpretation of the *Law of Property* rule,[152] the Wyoming Supreme Court likely had no opportunity to consider *Hoit*, which appears nowhere in the *Hofstad* opinion.[153] Nevertheless, the language of the "relevant evidence" formulation accurately synthesizes and describes the *Hofstad* court's reasoning and application of the *Law of Property* rule.[154]

In its initial verbatim statement of the *Law of Property* rule, the *Hofstad* court noted two established principles of Wyoming cotenancy law: (1) an unambiguous instrument of conveyance specifying cotenants' respective ownership shares controls a court's disposition of their property and (2) in the absence of such an instrument, a court will presume the parties own equal shares in the property, but this presumption may be rebutted by evidence of unequal contributions toward the property.[155] The language of the "relevant evidence" formulation preserves both principles: "The presumption that co-tenants hold equal ownership shares in the face of a deed that is otherwise silent may be rebutted. Evidence relevant

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[146] *Id.* at 818–19; Bixler v. Oro Mgmt., 86 P.3d 843, 850 (Wyo. 2004).

[147] 86 P.3d at 850; *see supra* note 42 and accompanying text.

[148] *Hofstad*, 240 P.3d at 118–19; *see supra* notes 136–40 and accompanying text.

[149] *See Hoit*, 320 S.W.3d at 772 (rejecting the "verbatim" interpretation of the *Law of Property* rule and concluding that the rule "should no longer be cited verbatim [because] the manner in which the principle was initially written improvidently suggests the existence of an irrebuttable presumption" (footnote omitted)).

[150] *See supra* notes 64–65 and accompanying text (quoting the "relevant evidence" formulation).

[151] *See Hofstad*, 240 P.3d at 816; *Hoit*, 320 S.W.3d at 761.

[152] *See supra* note 137.

[153] *See Hofstad*, 240 P.3d at *passim*.

[154] *See infra* notes 155–64 and accompanying text.

[155] *Hofstad*, 240 P.3d at 818–19; *see supra* notes 31–32 and accompanying text.

to rebut the presumption may include evidence that the co-tenants contributed unequally toward the purchase of the property."[156]

Beyond preserving these established principles of Wyoming cotenancy law, the "relevant evidence" formulation also reflects the *Hofstad* court's actual application of the *Law of Property* rule and the reasoning underlying that application.[157] The *Hofstad* court held that when cohabiting cotenants have contributed unequally toward jointly owned property, it "should be divided by determining the express or implied intent of the parties."[158] The *Hofstad* court also considered evidence of a family relationship between the parties.[159] Thus, *Hofstad* established a flexible analytical framework: the intent of the cohabiting cotenants ultimately controls the division of their jointly owned property, but while the existence of a family relationship is not dispositive,[160] evidence of a family relationship between cotenants is nonetheless relevant to a court's determination of their respective shares.[161]

The "relevant evidence" formulation describes the same framework: "[U]nequal contributions may be explained by evidence that the co-tenant contributing a greater amount toward purchase intended the disparity as an enforceable gift, a determination which may be influenced by evidence of the nature of the relationship among the co-tenants."[162] Testing the "relevant evidence" formulation against the holding in *Hofstad v. Christie*, Hofstad's promise to make Christie an equal owner of the house, and subsequently putting her name on the deed, evidenced his intent for the disparity in their contributions to be an enforceable gift.[163] Moreover, the nature of the parties' relationship—a long-term, intimate, cohabiting relationship with shared children—influenced the court's determination of their intent.[164] Thus, unlike a verbatim statement of the *Law of Property* rule, the "relevant evidence" formulation accurately describes the holding

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[156] *Hoit*, 320 S.W.3d at 772.

[157] *See infra* notes 158–64 and accompanying text.

[158] *Hofstad*, 240 P.3d at 821.

[159] *Id.* at 819–20.

[160] *See supra* notes 138–44 and accompanying text.

[161] *See Hofstad*, 240 P.3d at 822 (affirming the ruling of the district court granting Christie an equal share of the disputed house and noting that "[g]iven the parties' children and living situation over the course of the past ten years, a family relationship existed").

[162] Hoit v. Rankin, 320 S.W.3d 761, 772 (Mo. W. Dist. Ct. App. 2010).

[163] *See Hofstad*, 240 P.3d at 821–22 (discussing evidence of Hofstad's donative intent). Merely putting Christie's name on the deed did not establish Hofstad's intent to give her an equal share of the house; rather, he evinced this intent by promising to make her an equal owner of the house if they renewed their relationship and putting her name on the deed after they did renew their relationship. *Id.* at 821–22.

[164] *See id.* at 820–22 (describing the parties' relationship and noting the status of their relationship in discussing evidence of Hofstad's donative intent).

and reasoning of the Wyoming Supreme Court in *Hofstad*. Future Wyoming courts should therefore adopt the "relevant evidence" formulation as a matter of precedent.

Wyoming Case Law Supports the "Relevant Evidence" Formulation

The Wyoming Supreme Court has not applied the *Law of Property* rule except in *Hofstad v. Christie*,[165] but the court's reasoning in other cohabitation and cotenancy cases supports the "relevant evidence" formulation of the rule over the "verbatim" interpretation. The court has regularly enforced valid agreements between cohabitants,[166] including an agreement between cohabiting cotenants to share their property equally,[167] but has also emphasized that a cohabiting relationship cannot cure an otherwise defective contract.[168] The court has likewise emphasized that, because Wyoming does not recognize common-law marriage, a cohabiting relationship does not itself establish implied contract or equitable claims by one cohabitant against another.[169] The potential enforceability of such claims stems not from the status of the parties' relationship, but rather from promises or conduct suggesting the acceptance of certain obligations[170] and the intent of the parties.[171]

The Wyoming Supreme Court's established reliance on traditional principles of contract law and manifest unwillingness to recognize legal status for cohabitants in previous cases weigh against any argument that the *Hofstad* court recognized

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[165] *See supra* notes 146–48 and accompanying text.

[166] *See, e.g.*, Allen v. Anderson, 253 P.3d 182, 183–84 (Wyo. 2011) (affirming the distribution of a formerly cohabiting couple's real and personal property pursuant to a settlement agreement between the parties); Kinnison v. Kinnison, 627 P.2d 594, 595–96 (Wyo. 1981) (affirming the enforcement of an oral agreement between cohabitants in settlement of the woman's equitable claims).

[167] Schulz v. Miller, 837 P.2d 71, 75, 77–78 (Wyo. 1992). The court explained: "In reality, the transaction can be most accurately delineated as an agreement to make a gift when the purchase agreement was signed, with the gift then finalized and completed by delivery and acceptance of the recorded deed." *Id.* at 77 (citation omitted).

[168] *See* Bereman v. Bereman, 645 P.2d 1155, 1158–59 (Wyo. 1982) ("[P]urported 'agreements' between [cohabiting] couples are [not] exempt from compliance with Wyoming's law of contracts.").

[169] Shaw v. Smith, 964 P.2d 428, 437–38 (Wyo. 1998) ("We have long rejected the validity of claims based solely on the fact that the parties cohabited for an extended period of time precisely because we do not recognize common law marriage." (citing *Kinnison*, 627 P.2d at 595; Roberts v. Roberts (*In re* Roberts' Estate), 133 P.2d 492, 502 (Wyo. 1943))).

[170] *See Shaw*, 964 P.2d at 438 ("If . . . the application of contractual principles associated with an implied contract will impose unwanted obligations on cohabiting parties, we can only suggest that the parties refrain from conduct that implies the acceptance of such obligations or that the parties clearly identify the limits of their oral promises.").

[171] *See* Adkins v. Lawson, 892 P.2d 128, 131–32 (Wyo. 1995) (holding that the plaintiff could not recover the value of services rendered during a period of cohabitation under the doctrine of unjust enrichment because the plaintiff had cared for her partner out of love without expecting to be repaid).

such status for cohabitants under the "verbatim" interpretation of the *Law of Property* rule.[172] Conversely, the "relevant evidence" formulation comports with the rationale underlying the court's decisions in prior cohabitation cases: as with contract claims, the outcome of property disputes between cotenants depends on the intent of the parties, informed by their conduct and the circumstances of their relationship.[173]

Similarly, the "relevant evidence" formulation harmonizes with the Wyoming Supreme Court's previous decisions in cases involving married cotenants.[174] In such cases, the court has repeatedly held that, "when title to real estate was taken in the names of both spouses but only one spouse paid for it, there [is] a rebuttable presumption that a fifty percent interest was intended as a gift to the nonpaying spouse."[175] Applying this principle, the Wyoming Supreme Court has repeatedly divided the property of married cotenants according to the intent of the parties.[176] These holdings cannot be reconciled with the "verbatim" interpretation of the *Law of Property* rule, under which a married couple's family relationship[177] would establish an irrebuttable presumption that they share their property equally.[178]

Future courts might avoid this contradiction, of course, by only applying the "verbatim" interpretation in cohabitation cases, not marital cotenancy cases. This, however, would result in greater property rights for non-contributing cohabitants than non-contributing spouses because cohabiting cotenants in a family relationship would be irrebuttably presumed to share their property equally while spouses would not.[179] Such an outcome contradicts the Wyoming Supreme

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[172] *Compare* Nelson v. Killman (*In re* Killman), Bankr. No. 08-61703, Adversary No. 09-6075, 2010 WL 743685 (Bankr. W.D. Mo. Feb. 26, 2010) ("Because of the family relationship [between the cotenants], the unequal contribution is irrelevant and the presumption of equal ownership stands."), *with Shaw*, 964 P.2d at 437–38 ("We have long rejected the validity of claims based solely on the fact that the parties cohabited for an extended period of time precisely because we do not recognize common law marriage.").

[173] *See supra* notes 64–65 and accompanying text (quoting the "relevant evidence" formulation).

[174] *See infra* notes 175–83 and accompanying text.

[175] DeJohn v. DeJohn, 121 P.3d 802, 809 (Wyo. 2005) (quoting Barton v. Barton, 996 P.2d 1, 4 (Wyo. 2000)); *see* Tyler v. Tyler, 624 P.2d 784, 785–86 (Wyo. 1981).

[176] *See supra* note 34.

[177] *See* Hofstad v. Christie, 240 P.3d 816, 820 (Wyo. 2010) (finding a family relationship between the parties "even if [they] are not married, nor related by blood"); Margaret M. Mahoney, *Forces Shaping the Law of Cohabitation for Opposite Sex Couples*, 7 J.L. & FAM. STUD. 135, 158–59 (2005) (observing that marriage is a quintessential family status relationship).

[178] *See supra* note 130.

[179] *Compare* Nelson v. Killman (*In re* Killman), Bankr. No. 08-61703, Adversary No. 09-6075, 2010 WL 743685 (Bankr. W.D. Mo. Feb. 26, 2010) ("Because of the family relationship [between the cotenants], the unequal contribution is irrelevant and the presumption of equal ownership stands."), *with, Barton*, 996 P.2d 1, 4 (Wyo. 2000) ("[W]hen title to real estate was taken in the names of both spouses but only one spouse paid for it, there [is] a rebuttable presumption that a fifty percent interest was intended as a gift to the nonpaying spouse.").

Court's express recognition that married couples enjoy greater protections than cohabitants.[180] This recognition, coupled with the court's established rule that even married cotenants are not irrebuttably presumed to share their property equally, weigh heavily against any argument that the *Hofstad* court adopted the "verbatim" interpretation of the *Law of Property* rule and recognized legal status for cohabitants.

Conversely, the Wyoming Supreme Court's marital cotenancy jurisprudence supports the "relevant evidence" formulation of the *Law of Property* rule because, under the "relevant evidence" formulation, a family relationship between cohabiting cotenants does not establish an irrebuttable presumption that the parties share the property equally.[181] Rather, a court considers "the nature of the relationship among the co-tenants" as evidence of their intent.[182] The "relevant evidence" formulation thus comports with the established Wyoming rule that, in determining the ownership shares of cotenants, even a marital relationship does not trump the intent of the parties.[183] Future Wyoming courts may adopt the "relevant evidence" formulation as fully consistent with established Wyoming law.

What Hofstad *Means for Wyoming Cotenancy Law*

The decision in *Hofstad v. Christie* preserved and clarified several bedrock principles of Wyoming cotenancy law. When an instrument of conveyance unambiguously specifies cotenants' respective shares in their property, the instrument controls and may not be contradicted by parol evidence.[184] When the instrument of conveyance does not otherwise specify, cotenants are presumed to share their property equally.[185] The mere presence of each cotenant's name on an instrument does not, however, establish that they share the disputed property

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[180] *See* Kinnison v. Kinnison, 627 P.2d 594, 595 (Wyo. 1981) ("In this state, living arrangements between a man and woman must be formalized by the state before the traditional protections of the marriage relationship can be invoked.").

[181] *See* Hoit v. Rankin, 320 S.W.3d 761, 770 (Mo. W. Dist. Ct. App. 2010) ("[W]e do not believe . . . the rebuttable presumption of equal ownership becomes irrebuttable even if evidence of *both* a family relationship and donative intent are present."); *supra* notes 64–65 and accompanying text (quoting the "relevant evidence" formulation).

[182] *See supra* notes 64–65 and accompanying text (quoting the "relevant evidence" formulation).

[183] *See supra* note 34 and accompanying text.

[184] *See* Hofstad v. Christie, 240 P.3d 816, 818 (Wyo. 2010); Bixler v. Oro Mgmt., 86 P.3d 843, 850 (Wyo. 2004); Schulz v. Miller, 837 P.2d 71, 75 (Wyo. 1992).

[185] *Hofstad*, 240 P.3d at 818 (citing *Bixler*, 86 P.3d at 850).

equally.[186] Instead, the presumption of equal shares may be rebutted by evidence of unequal contributions toward the property.[187]

Hofstad established that cohabitants' express or implied intent ultimately determines the distribution of their jointly owned property.[188] *Hofstad* likewise established that, in reaching this determination, a court must consider evidence of a family relationship between the parties.[189] The *Hofstad* court rejected, however, any notion that a family relationship between cohabiting cotenants entitles them to equal ownership.[190] Rather, the court established a flexible analytical framework under which the property of cohabiting cotenants should be distributed according to a determination of their express or implied intent, a determination which may be influenced by evidence of a family relationship.[191]

The *Hofstad* court indicated that this framework should apply in all non-commercial cotenancy disputes.[192] Whether the *Hofstad* framework should also apply in cases involving corporate cotenants is less certain. In *Bixler v. Oro Management*, the Wyoming Supreme Court suggested—without holding—the original language of the *Law of Property* rule might apply in a corporate cotenancy case.[193] In *Hofstad*, the court indicated that a "mechanical" application of the *Law of Property* rule "may be appropriate for commercial investments."[194] If future Wyoming courts apply a rigid formulation of the rule in corporate cotenancy

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[186] *Id.* at 818–19 (considering parol evidence to determine the cotenants' respective shares despite the presence of both names on the deed); *cf. Schulz*, 837 P.2d at 73, 78 (Cardine, J., dissenting) ("The purchase offer and acceptance agreement [containing the names of both parties] indicates only that appellant and appellee are the purchasers of this real estate. From the writing itself, it is impossible to ascertain who should pay, whether there was a gift, or how title should be held.").

[187] *Hofstad*, 240 P.3d at 818; *Bixler*, 86 P.3d at 850; *see* Binning v. Miller, 102 P.2d 64, 77 (Wyo. 1940) ("[I]n the absence of an agreement to the contrary, joint purchasers of an estate held shares therein in proportion to their contribution to the purchase price." (citation omitted)); *supra* note 32.

[188] *Hofstad*, 240 P.3d at 821.

[189] *See id.* at 819–20, 822 (discussing the issue of whether the parties shared a family relationship and referencing this relationship in its disposition of the case).

[190] *See supra* notes 138–44 and accompanying text.

[191] *See supra* notes 158–64 and accompanying text.

[192] *See Hofstad*, 240 P.3d at 821 ("The difficulty with the application of the rules of cotenancy is that their mechanical operation does not consider the nature of the relationship of the parties. While this may be appropriate for commercial investments, a mechanistic application of these rules will not often accurately reflect the expectations of the parties.").

[193] 86 P.3d 843, 850 (Wyo. 2004); *see supra* notes 35–45 and accompanying text (discussing *Bixler*).

[194] 240 P.3d at 821.

cases, however, the original language of the *Law of Property* rule should be modified to avoid suggesting that a similarly rigid rule should apply in cases involving family relationships.[195]

What Hofstad *Means for Wyoming Cohabitants*

Professor Goldberg has suggested that states may revive the doctrine of common-law marriage by extending shared property rights to cohabitants whose relationships resemble traditional marriages.[196] But in *Hofstad*, the Wyoming Supreme Court did not extend shared property rights to cohabiting cotenants based on the nature of their relationship.[197] Instead, the Wyoming Supreme Court held that when cotenants have cohabited, the distribution of their property depends on their intent.[198] And while the distribution of jointly owned property between married cotenants in Wyoming also depends on their intent,[199] this similarity between marital and cohabitant cotenancy law in Wyoming does not indicate a revival of the doctrine of common-law marriage. Rather, the Wyoming Supreme Court's holding in *Hofstad* conforms to the established rule that, in Wyoming, even a marriage relationship is not enough to defeat the intent of the parties with respect to their jointly owned property.[200] Just as cohabitants in Wyoming may be bound by theories of contract law based on their promises and conduct,[201] so too may the conduct and intent of cohabiting cotenants affect their joint ownership of property.[202]

As a practical matter, of course, this distinction between status- and intent-based property distributions may make little difference to "the ex-boyfriend [or girlfriend] who now wants his [or her] real estate back free and clear of claim by the co-grantee."[203] Cohabitants in Wyoming may, however, take preventative measures to protect their property. A cohabitant who contributes more toward a joint purchase than her counterpart may guarantee herself a proportional interest in the property through explicit language in the deed, rendering the *Hofstad* analysis inapplicable.[204] Cohabitants may also protect their interests by

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[195] *See supra* note 149.

[196] *See* Goldberg, *supra* note 69, at 537.

[197] *See supra* notes 138–44 and accompanying text.

[198] *Hofstad*, 240 P.3d at 821.

[199] *See supra* note 34.

[200] *See supra* note 34.

[201] *See supra* notes 169–70 and accompanying text.

[202] *See supra* notes 160–61 and accompanying text.

[203] Schulz v. Miller, 837 P.2d 71, 73 (Wyo. 1992).

[204] *See supra* note 31 and accompanying text.

entering into an express agreement governing the distribution of their property.[205] Most importantly, as the Wyoming Supreme Court suggested in *Shaw v. Smith*, cohabitants seeking to avoid unwanted obligations should "refrain from conduct that implies the acceptance of such obligations . . . [and] clearly identify the limits of their oral promises."[206]

It remains to be seen whether future Wyoming litigants will cite *Hofstad* in support of expanded legal rights for cohabitants beyond the context of property law, but the court's holding that cohabitants may share a family relationship suggests such arguments may eventually arise. For example, courts in both New Hampshire and New Jersey have concluded that a close relationship between unmarried cohabitants may support a tort claim for negligent infliction of emotional distress.[207] In *Gates v. Richardson*, the Wyoming Supreme Court limited "the class of plaintiffs who may bring an action for negligent infliction of emotional distress" to "spouses, children, parents, and siblings."[208] Yet the court has parenthetically construed *Gates* using different language: "[N]egligent infliction of emotional distress [is] limited by the requirements of a family relationship and observation of serious bodily harm."[209] Future litigants might therefore cite the finding of a family relationship between the parties in *Hofstad* in arguing that a cohabitant who witnesses an injury to her partner should be able to bring an action for negligent infliction of emotional distress.

CONCLUSION

In *Hofstad v. Christie*, the Wyoming Supreme Court established a flexible analytical framework for analyzing a cotenancy dispute between former cohabitants: such parties are presumed to share their property equally, but considering evidence of unequal contributions and the nature of the parties' relationship, a court must

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[205] *See* Allen v. Anderson, 253 P.3d 182, 183–84 (Wyo. 2011) (affirming the distribution of a formerly cohabiting couple's personal property pursuant to an unambiguous settlement agreement between the parties).

[206] 964 P.2d 428, 438 (Wyo. 1998).

[207] Graves v. Estabrook, 818 A.2d 1255, 1258, 1261–62 (N.H. 2003); *see* Dunphy v. Gregor, 642 A.2d 372, 378 (N.J. 1994). Factors indicating cohabitants share a "close relationship" in this context include:

> [T]he duration of the relationship, the degree of mutual dependence, the extent of common contributions to a life together, the extent and quality of shared experience, and . . . whether the plaintiff and the injured person were members of the same household, their emotional reliance on each other, the particulars of their day to day relationship, and the manner in which they related to each other in attending to life's mundane requirements.

Graves, 818 A.2d at 1262 (quoting *Dunphy*, 642 A.2d at 378).

[208] 719 P.2d 193, 199 (Wyo. 1986).

[209] Larsen v. Banner Health Sys., 81 P.3d 196, 199 (Wyo. 2003) (citation omitted).

ultimately settle the dispute by determining the express or implied intent of the parties.[210] To preserve this framework, future Wyoming courts should not state the original language of the *Law of Property* rule, which the *Hofstad* court clearly rejected.[211] Instead, future Wyoming courts should adopt the "relevant evidence" formulation of the rule, which comports with both the reasoning in *Hofstad* and established principles of Wyoming law.[212] Despite finding a family relationship between the parties in *Hofstad*, the Wyoming Supreme Court, far from recognizing legal status for unmarried cohabitants in Wyoming, merely affirmed its longstanding recognition that cohabiting parties, like married parties, may be bound by their intent.[213]

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[210] *See supra* notes 155–61 and accompanying text.

[211] *See supra* notes 130–49 and accompanying text.

[212] *See supra* notes 150–83 and accompanying text.

[213] *See supra* notes 196–202 and accompanying text.