

## **Andrew and Brenda**

In 2005, Andrew and Brenda began living together in State A while both were attending college there. Andrew proposed marriage to Brenda, but she refused. However, after learning that she was pregnant, Brenda told Andrew that she wanted to marry him before the baby was born. Andrew was thrilled and told her that they were already married “in the eyes of God.” Brenda agreed.

Andrew and Brenda did not obtain a marriage license or have a formal wedding. Nonetheless, Brenda started using Andrew’s last name even before their daughter, Chloe, was born. After Andrew graduated from college and started a new job, he listed Brenda as his spouse so that she could qualify for benefits through Andrew’s employer. They also filed joint income tax returns.

In March 2007, just after Chloe’s first birthday, Andrew and Brenda decided to separate. They had little property to divide and readily agreed to its disposition. Andrew agreed that Brenda should have sole custody of Chloe, and Brenda, desiring the cleanest break possible, agreed that Andrew would not be responsible for any child support. Andrew told Brenda that no formal divorce was necessary because they had never formally married.

In June 2007, Brenda and Chloe moved to start a new life in State B. Andrew sent Chloe an occasional card or birthday gift, but otherwise maintained no contact with Chloe or Brenda. Not long after settling in State B, Brenda met and fell in love with Daniel.

In 2008, Brenda and Daniel obtained a State B marriage license and wed. Thereafter, Daniel formed a close and loving bond with Chloe. Indeed, with only very infrequent contact from Andrew, Chloe regarded Daniel as her father and called him “Dad.”

In January 2017, Brenda purchased a lottery ticket. The ticket won a jackpot of \$5 million, which was paid that month. Shortly thereafter, Brenda informed Daniel that she wanted a divorce and that she intended to use her lottery winnings to launch a new life with Chloe in a distant state and break off all contact with Daniel. When Chloe learned about this, she became very upset because she continues to regard Daniel as her father.

State A recognizes common law marriage. State B formerly allowed common law marriage until a statute, enacted in 2001, prospectively barred the creation of new common law marriages within the state. Neither State A nor State B is a community-property state.

1. On what basis, if any, would Andrew have a claim to a share of Brenda’s lottery winnings? Explain.
2. Assuming that Andrew and Brenda have a valid marriage, on what basis, if any, would Daniel have a claim to a share of Brenda’s lottery winnings? Explain.
3. If Brenda cuts off all contact between Chloe and Daniel, can Daniel obtain court-ordered visitation with Chloe? Explain.

## ANSWER #1

1. The issue is on what basis if any Andrew would have a claim to a share of Brenda's lottery winnings.

The rule is that a common law marriage is a valid marriage when the couple cohabits, they hold each other out as husband and wife, and there is an agreement that the couple intends to be married. Here, Andrew and Brenda lived together since 2005; Brenda expressed the desire to marry Andrew after she became pregnant, and Andrew stated that they were married 'in the eyes of God.' Additionally, Brenda started using Andrew's last name, they filed joint income tax returns, and Brenda was listed as Andrew's spouse in his employment documents. Therefore, all the elements of common law marriage are satisfied here, and the couple was actually married.

The rule is that under the conflicts of laws and full faith and credit clause of the Constitution, states must recognize common law marriages when such marriage is valid in a sister state. Here, Andrew and Brenda had a valid common law marriage in State A; therefore, State B should recognize it as a valid marriage despite the fact that it bars the *creation* of new common law marriages.

According to the doctrine of equitable distribution, the couple's marital property is divided equitably between the couple upon their decision to divorce. This does not mean that the property is divided equally (50-50) but it is rather divided by what is fair according to each individual's financial status, earning capacity, and distribution during the marriage. In order for the division to be done properly, first courts look at what constitutes marital property and what does not. Usually, property acquired during the marriage, is considered marital property.

Here, as already stated, the couple was properly married in State A. When the couple separated, no formal divorce decree was entered, as Andrew thought that it was not necessary since they had not formally gotten married. However, since there was a common law marriage between the two, this means that when Brenda married Daniel, she

was already married to Andrew. Andrew could then argue that since their marriage was not dissolved, the lottery winnings constituted marital property subject to equitable distribution.

Therefore, Andrew could claim a share to Brenda's lottery winning based on the basis that she was still married to him at the time of the winning, and thus the winning constituted marital property.

2. The issue is whether Daniel would have a claim to a share of Brenda's lottery winnings and on what basis, if her marriage to Andrew is deemed to be valid.

The rule is that bigamy is not allowed, and therefore, should one person marry another when she is already validly married to another, then the second marriage is invalid.

The rule is that according to the doctrine of putative spouse, a spouse who was not aware that his/her marriage was void or voidable, she is not at fault and she can still have a claim against the other spouse.

Here, Daniel was married to Brenda and he was not aware of the fact that she was married already married to Andrew. Therefore, her marriage to Daniel is not valid but he still could still have a claim to the proceeds of the lottery winnings if he proves that he reasonably believed to be married to her and he was not aware that their marriage was void.

Therefore, according to the doctrine of equitable distribution of marital property detailed above, Daniel could have a claim to the lottery winnings.

3. The issue is whether Daniel can obtain a court-ordered visitation with Chloe if Brenda cuts off all contact between Chloe and Daniel.

The rule is that adoptive parents have the same rights as biological parents once they adopt the child. Children's biological parents have the right to elect visitation with respect to grandparents or other individuals. When courts review visitation or custody rights, the standard is the best interests of the child. Additionally, when the child is in a position to express her opinion (usually over 7 years old), her opinion is taken into consideration.

Here, Daniel never officially adopted Chloe but he and Chloe established a very close relationship. He acted as her father for all intents and purposes despite the fact that he did not formally adopt her. Daniel was around for the majority of Chloe's life and she called him "dad." Andrew was scarcely around during Chloe's life and he moved out when she was one year-old. Evidence of the close relationship, that when Chloe found out that

Daniel would move out, she became very upset because she continued to consider him as her father. The court will most likely award visitation rights to Daniel, given the close relationship he has with Chloe, Chloe's desire to continue having a relationship with Daniel, as well as the fact that it would be in her best interests to continue a relationship with a father figure.

Therefore, Daniel will likely obtain a court-ordered visitation with Chloe.

## **ANSWER #2**

### Andrew's Claim to Brenda's Lottery Winnings

Andrew has a claim to a share of Brenda's lottery winnings on the grounds that they entered into a valid common-law marriage in State A in 2005, never divorced, and the lottery winnings are part of the marital estate.

State A recognizes common law marriage. A common law marriage requires two adults to agree they are married, hold each other out to the world as spouses, and co-habit as a married couple. Andrew and Brenda have a valid common law marriage. The agreement to be married can be evidenced by the exchange of present-tense words indicating that they agree to be married at that time, not some time in the future. Brenda told Andrew she wanted to marry him before the baby was born, Andrew said they were already married in the eyes of God, and Brenda agreed; this constitutes a present tense agreement to be married even without a formal wedding ceremony. Brenda and Andrew also held each other as spouses to the world; Brenda used Andrew's last name, and Andrew listed Brenda on their joint tax returns and listed her as his spouse with his employer so she could get his job benefits. Finally, Brenda and Andrew lived together beginning in 2005, fulfilling the cohabitation requirement.

Andrew and Brenda agreed to separate in March 2007 but never obtained a judicial decree of divorce. Andrew can argue that since they never obtained a divorce, they are still married. Even if they now agree to formally divorce, Brenda won her lottery ticket before they officially divorced or filed any separation claim. In some jurisdictions, all property obtained up until a final divorce decree is issued is considered marital property; in others, property acquired only up until a divorce action is filed is considered separate property. In either type of state, the lottery ticket would be considered marital property. Finally, a premarital agreement can classify certain types of property that will be considered separate property; however, there is no evidence Andrew and Brenda entered into a premarital agreement in this case.

Therefore, Andrew can claim a share of Brenda's lottery winnings on the basis that she won the lottery while still in a marriage entered into with him pursuant to State A's common law marriage statute. Should Andrew and Brenda divorce, Andrew would be entitled to equitable division of the marital estate, so while he may not necessarily get 50% (he would be entitled to 1/2 in a community property state, but State A and State B are not community property states), he would be entitled to an equitable share. The equitable division would be determined based on the theory that the marriage was a partnership, and would evaluate factors such as the length of the marriage and the financial and non-financial contributions of each spouse towards increasing the marital estate.

### Daniel's Claim to Brenda's Lottery Winnings

Daniel may have a claim to Brenda's lottery winnings on the basis that he was the putative spouse of Brenda, because entered into the marriage in good faith that it would be a valid marriage.

A person can only be married to one person at a time. A person must divorce their spouse (or the other spouse dies) before entering into a new marriage. Assuming Andrew and Brenda entered into a valid common-law marriage in 2006 and did not divorce, Brenda was still married Andrew in 2008 when she and Daniel obtained a State B marriage license and wed. There is a presumption that the most recent marriage is valid, but this can be overcome with evidence of a prior marriage that is still valid. In this case, Brenda and Andrew never divorced; therefore Brenda could not enter into a new marriage with Daniel in 2008.

Even though Brenda and Daniel's 2008 marriage in State B is invalid, Daniel can benefit from the protections of State B's equitable distribution laws provided he entered into the marriage in good faith without knowing that Brenda was already married and that his marriage to her would not be valid.

Daniel has another claim to Brenda's lottery winnings on the basis that State B does not allow common law marriage since enacting a statute prospectively barring the creation of new common law marriages within the state in 2001. Under the Full Faith and Credit clause of the US Constitution, a state is required to give full faith and credit to judicial orders from other states; this includes marriages and divorces. However, it does not require a state to recognize marriages against the state's own strong public policy. Some states have a strong public policy against recognizing marriages between two cousins who are too closely related, and other states have strong public policies against common law marriages. State B does not allow common law marriages to be entered into in State B, but it is unclear whether they have a strong public policy against it. If State B has a strong public policy against common law marriages, Daniel can argue that Andrew and Brenda's marriage is not recognized in State B, therefore Brenda was free to marry Daniel in State B, and he is her spouse entitled to an equitable share of their marital estate.

However, this runs the risk of allowing some people to enter into second marriages in certain states, and forcing other states to choose between two marriages entered into by those people so Daniel's stronger argument is to claim the protection of State B's property division laws on the grounds that he entered into the marriage in good faith, unaware of the legal impediment to him marrying Brenda.

### Daniel's claim for court-ordered visitation with Chloe

This issue is whether Daniel has a claim to visitation rights with Chloe when Daniel is not the biological father of Chloe, but is a stepparent Chloe regards as her father.

Biological parents have a substantive due process right to the care of their children. A fit parent's decisions on child rearing are given the most weight. As Chloe's biological mother, Brenda is afforded wide discretion with how to raise her daughter, including who gets visitation rights.

However, the court's main goal in determining custody issues is to determine the best interest of the child. A court may order stepparent visitation when the court determines that it is in the best interest of the child. Daniel will have to argue that his continued relationship with Chloe is so important to her emotional, mental, and or physical well-being that the Court can override Brenda's constitutional rights as a fit parent.

Daniel and Brenda were together from 2008 to 2017, which is 9 years. For those 9 years, Chloe had only infrequent contact with her biological father Andrew, and received no child support from him. Chloe had a close and loving bond with Daniel, regarded him as her father, and called him "Dad". Chloe was very upset when she learned Brenda wanted to break all contact and move far away because she continues to regard Daniel as her father. If Daniel can establish more evidence in his favor, such as that he would have adopted Chloe but for the legal impediment of Andrew still having his parental rights, and that he was such a primary caretaker of Chloe that it is important to continue that relationship, he will have a strong argument in favor of visitation rights.