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Resolving Interstate Conflicts over Marriage, Marriage-Like, and Marriage-Lite Relationships

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Only six states currently permit same-sex couples to wed. However, several states that balk at the idea of extending marriage to same-sex couples are less vehemently opposed when marriage rights come packaged under other names. Thus, some states (the “Marriage-Like states”) offer alternatives functionally identical, or at least nearly so, to marriage; and others (the “Marriage-Lite states”) provide same-sex couples with some but not all of the rights and responsibilities associated with marriage. As the country continues to grapple with the debate over same-sex relationships, more states are likely to experiment with these alternative models. As a result, we can expect to see more and new kinds of conflicts of laws.

What happens when a same-sex couple married in a Marriage state moves to a Marriage-Like state; or from a Marriage-Like to a Marriage-Lite state; or from a Marriage-Lite to a Marriage state—and so on? Do they keep their rights and responsibilities?; do they lose them as they cross the border?; does it depend, and if so, on what?

Unfortunately, the law is a mess and legal scholarship offers little guidance. This Article addresses these new conflicts for the first time and develops a framework rooted in conflicts principles. The framework, which I call the Common Denominator Approach, offers a straightforward, comprehensive, and intuitive method for resolving these conflicts. Moreover, it suggests a new approach to several other conflicts problems and has implications well beyond conflicts context.