



Name of Country and Jurisdiction:

**Spain**

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to Delaware is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Delaware for an authority to grant a divorce/dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLES	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	National	Article 44 of the <i>Spanish Civil Code</i> : 1. "Men and women are entitled to marry in accordance with the provisions of this Code". 2. "Marriage will have the same requisites and effects when both spouses are of the same or different sex."	Yes

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLES	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<b>HISTORICAL TERRITORIES<sup>1</sup></b>			
Civil union, registered	Catalonia	According to the article 234 of the Civil Code of Catalonia, the stable couples can be registered with a (i) continuous period of cohabitation of two years; (ii) an undefined period of cohabitation and common children or a (iii) public declaration (in a public deed) of their desire to be involved in such a union.	Yes
	Aragon	According to the article 3 of the Stable Union Act 6/1999, the stable couples can be registered with a (i) continuous period of cohabitation of two years or a (ii) public declaration (in a public deed) of their desire to be involved in such a union.	Yes
	Navarra	According to the article 2 of the Legal Equality of Stable Partnerships Act 6/2000, the stable couples can be registered with a (i) continuous period of cohabitation of one year; (ii) an undefined period of cohabitation and common children or a (iii) public declaration (in a public deed) of their desire to be involved in such a union.	Yes
	Balearic Islands	According to the article 1 of the Stable Union Act 18/2001, is imperative to register in a Public Registry if a couple seeks legal recognition.	Yes

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<sup>1</sup> The legislation on unmarried couples that paved the way towards same sex marriage is legislation of the Autonomous Communities. It should in this context be recalled that Spain is a country with non unified legal system. A further factor of complexity is that only seven of seventeen Autonomous Communities have legislating powers in the area of private law. These are Catalonia, Basque Country, Galicia and Balearic Islands (these are called “historical” territories or *territorios forales*). All the *territorios forales* have special legislation on unmarried couples that deals with private law matters.



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLES	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<b>HISTORICAL TERRITORIES<sup>1</sup></b>			
Civil union, registered	Basque Country	According to the article 3 of the Civil Partnerships Act 2/2003, is imperative to register in a Public Registry if a couple seeks legal recognition.	Yes
	Galicia	According to the Third Additional Disposition of the Civil Code of Galicia, the unmarried couples can opt between get marry or register as a civil partnership with the same effects	Yes
<b>OTHER AUTONOMOUS COMMUNITIES<sup>2</sup></b>			
Civil union, registered	Castilla la Mancha	According to the article 3 of the Creation of the Civil Partnership Register Decree 124/2000, is imperative to register in a Public Registry if a couple seeks legal recognition.	Yes
	Valencia	According to the article 3 of the Creation of the Regularized Civil Partnership Act 5/2012, is imperative to register (in person or using a public deed) in a Public Registry if a couple seeks legal recognition.	Yes

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<sup>1</sup> The legislation on unmarried couples that paved the way towards same sex marriage is legislation of the Autonomous Communities. It should in this context be recalled that Spain is a country with non unified legal system. A further factor of complexity is that only seven of seventeen Autonomous Communities have legislating powers in the area of private law. These are Catalonia, Basque Country, Galicia and Balearic Islands (these are called "historical" territories or *territorios forales*). All the *territorios forales* have special legislation on unmarried couples that deals with private law matters.

<sup>2</sup> Nevertheless, legislation on unmarried couples has also been enacted by other Autonomous Communities although those cannot legislate on matters belonging to private law. Such legislation is rather thin in substance since it deals with very limited areas of public law that are open to intervention by the Autonomous Community.

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLES	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<b>OTHER AUTONOMOUS COMMUNITIES<sup>2</sup></b>			
Civil union, registered	Asturias	According to the article 3 of the Stable Civil Partnerships Act 4/2002, the stable couples can be registered with a (i) continuous period of cohabitation of one year; (ii) an undefined period of cohabitation and common children or a (iii) public declaration (in person or using a public deed) of their desire to be involved in such a union.	Yes
	Canary Islands	According to the article 3 of the Regularized Civil Partnership Act 5/2003, is imperative to register (in person or using a public deed) in a Public Registry if a couple seeks legal recognition.	Yes
	Madrid	According to the article 1 of the Civil Partnerships Act 11/2001, the stable couples can be registered with a continuous period of cohabitation of twelve months.	Yes
	Extremadura	According to the article 2 of the Regularized Civil Partnership Act 5/2003 the stable couples can be registered with a (i) continuous period of cohabitation of one year; (ii) an undefined period of cohabitation and common children or a (iii) public declaration (in public deed) of their desire to be involved in such a union.	Yes

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLES	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<b>OTHER AUTONOMOUS COMMUNITIES<sup>2</sup></b>			
Civil union, registered	Cantabria	According to the article 4 of the Regularized Civil Partnership Act 1/2005 the stable couples can be registered with a (i) continuous period of cohabitation of one year; (ii) an undefined period of cohabitation and common children or a (iii) public declaration (in public deed) of their desire to be involved in such a union.	Yes
	Andalucia	According to the article 5 of the Stable Union Act 5/2002, is imperative to register in a Public Registry if a couple seeks legal recognition.	Yes

<sup>2</sup> Nevertheless, legislation on unmarried couples has also been enacted by other Autonomous Communities although those cannot legislate on matters belonging to private law. Such legislation is rather thin in substance since it deals with very limited areas of public law that are open to intervention by the Autonomous Community.

**Q**

**2. What are the requirements to be able to enter into the above relationships?**

(i) If a geographic link is required:

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>The resolution of the General Direction of Registers and Notaries (<i>Dirección General de Registros y Notariado</i>) of July 29, 2005 declares valid a same sex marriage in the following cases:</p> <ul style="list-style-type: none"> <li>a) The marriage between a Spanish citizens even if they got married abroad, regardless of whether the country which the marriage took place is not allowed the same sex marriage.</li> <li>b) The marriage concluded in Spain between a Spanish citizen and other from a country under whose law same sex marriage is possible.</li> <li>c) The marriage concluded in Spain between a Spanish citizen and other from a country under whose law same sex marriage is not allowed but the conflict of laws rule sends it to the Spanish applicable law (because the residence or the place of the conclusion of the marriage).</li> <li>d) The marriage concluded abroad between a Spanish citizen and other from a country and the applicable law is a country under whose law same sex marriage is possible.</li> <li>e) The marriage between at least one Spanish plurinational citizen although one of these nationalities does not allow same sex marriages.</li> <li>f) The marriage between two foreigners with residence in Spain although no one of their nationalities allows same sex marriages.</li> <li>g) Finally, the marriage between a Spanish citizen and a foreigner from a country under whose law the same sex marriage is not permitted. In this case, the <i>Dirección General</i> indicated that the application of a foreign law could violate public policy if the result was that same sex marriage could not be conclude.</li> </ul>
Civil union	At least one of the parties must be resident in the Autonomous Community where the Register is placed except in Asturias and Castilla la Mancha, where the two persons must be residents there.

(ii) If other substantive eligibility criteria must be satisfied:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>To be legally married in Spain, both parties must:</p> <ul style="list-style-type: none"> <li>• Be unmarried.</li> <li>• Be at least 18 years of age or 14 if the person is legally emancipated.</li> </ul> <p>The following persons may also not marry each other:</p> <ul style="list-style-type: none"> <li>• Direct relatives by consanguinity or adoption.</li> <li>• Collateral relatives by consanguinity up to the third degree.</li> <li>• Persons sentenced as authors of or accomplices in the murder of the spouse of either of them.</li> </ul>



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Civil union	As a general view, legislation on unmarried partnerships in the Territorios Forales, that cover private law, tends to be inspired by rules applying to married spouses. Then, the requirements are the same than for the marriage but in addition, apart from the basic eligibility criteria, the parties cannot be joined in a marriage or a civil union in the same or other Autonomous Community.
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**Q**

**3. If both marriage and civil unions exist in the country:**

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

**A**

(a)	A marriage may be celebrated and registered directly by the Catholic Church, while for the recognition the other religions (Muslims, Jewish or Evangelic Churches) needs the elaboration of a previous record. Apart from this, there are no differences in the eligibility between marriage and civil unions.
(b)	No person may enter into a civil partnership if they are already married or registered in a civil partnership registry (with the same or with a different person). Nevertheless, if a person who is in a civil partnership marries, the civil partnership terminates.  There is an exception in <u>Catalonia</u> , where the fact that one or both partners are still married to another person does not constitute an impediment to constituting a “stable partnership” if such persons have separated from their spouse, according to the article 234.2 of the Catalan Civil Code.
(c)	None, other than as set forth in 3(b) above.

**Q**

**4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?**

**A**

Marriage	No person may enter into a marriage if they are already married; it will be necessary to dissolve the previous marriage by a divorce.
Civil union	No person may enter into a civil union if they are already married or registered in another civil partnership; it will be necessary to dissolve the previous relation (with the exceptions explained in the Question 3 (b) regarding the Autonomous Community of Catalonia).



**5. When a couple comes to the country, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?**

Q

A

Marriage	Apart from the explained in the Question 2 (i), the recognition of a same sex marriage from another country which has opened up this kind of marriages do not raise fundamental difficulties, inasmuch as same sex marriages are therefore governed by the same rules as “traditional” marriages. The foreign marriage will be deemed to be a marriage and all other conflict of laws rules will be applied to the marriage.
Civil union	In the same way than with Spanish nationals, a foreign formed civil union is recognized if at least one (or both, it depends) of the parties to the civil union were ordinarily resident at the time in the Autonomous Community in which they were engaged and if they comply with the other requirements as well as the registration.

Q

**6. How can each form of relationship be dissolved in the country? What is the jurisdictional nexus for an authority to grant a divorce/dissolution?**

A

Marriage	<p>According to the Spanish Civil Code, the marriage shall be dissolved, whatever the form and time of its performance, by the death of one of the spouses and by the divorce. The divorce shall be declared by the court, whatever the form of performance of the marriage, at the request of one of the spouses, of both or of one with the consent of the other, according to the following requirements:</p> <ul style="list-style-type: none"> <li>a) At the request of both spouses or of one with the consent of the other, after the lapse of three (3) months from the performance of the marriage. The claimant must necessarily attach the proposal of settlement agreement.</li> <li>b) At the request of one of the spouses, after the lapse of three (3) months from the performance of the marriage. The lapse of this period shall not be required to file the claim when there is evidence of the existence of risk to the life physical integrity, freedom, moral integrity or sexual liberty and integrity of the spouse filing the claim or the children in common or any member of the marriage.</li> </ul> <p>Regarding the jurisdictional nexus for an authority to grant a divorce, the competent court to grant a divorce is the one of the place of residence of the couple.</p>
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Civil union	<p>As is explained in the Question 1, the legislation regarding civil unions has been developed by the Autonomous Community, therefore the dissolution of the civil partnership is as follows:</p> <ul style="list-style-type: none"> <li>a) One or both spouses die.</li> <li>b) One or both spouses get married with different persons (not parties of the domestic relationship).</li> <li>c) Mutual consent.</li> <li>d) Unilateral will of one of its members.</li> <li>e) Effective cessation of cohabitation for more than one year (six months in Canary Islands and Madrid; three months in Valencia; and no limits in Catalonia and Basque Country).</li> </ul> <p>Apart from these common causes, (i) in Valencia parties can terminate the partnership if there are a criminal offense against the other party; (ii) in Castilla la Mancha there are not causes, then I depends on the intention of the parties; (iii) in Catalonia and in Navarra parties can add in public document more causes for the dissolution of the civil union and; (iv) in Galicia the provisions are the same than in the marriage.</p>
Forthcoming changes	<p>There is a bill which provides to the Public Notaries to grant divorces by mutual consent.</p> <p>It is expected that this change will come into effect before the end of 2014.</p>

## ■ Sources:

List here primary applicable legislation and any secondary sources used.

### Statutes

- *Spanish Civil Code 1889*
- *Civil Code of Catalonia 2006*
- *Civil Code of Galicia 2006*
- *Stable Union Act 6/1999, of Aragon.*
- *Legal Equality of Stable Partnerships Act 6/2000, of Navarra*
- *Stable Union Act 18/2001, of Balearic Islands.*
- *Civil Partnerships Act 2/2003, of Basque Country*
- *Creation of the Civil Partnership Register Decree 124/2000, of Castilla la Mancha*
- *Creation of the Regularized Civil Partnership Act 5/2012, of Valencia.*
- *Stable Civil Partnerships Act 4/2002, of Asturias.*
- *Regularized Civil Partnership Act 5/2003, of Canary Islands*
- *Civil Partnerships Act 11/2001, of Madrid.*
- *Regularized Civil Partnership Act 5/2003 of Extremadura.*
- *Regularized Civil Partnership Act 1/2005 of Cantabria.*
- *Stable Union Act 5/2002, of Andalusia.*

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### Manuals

- *All or nothing: the dilemma of southern jurisdictions.* Cristina González Beilfuss.
- *Private International Law. Aspects of same sex marriages and partnerships in Europe. Divided we stand?* Patrick Wautelet.
- *A patchwork of partnerships: comparative overview of registration schemes in Europe.* Ian Curry-Sumner.
- *Judicial Restraint and Political Responsibility: A review of jurisprudence of the Italian, Spanish and Portuguese High Courts on the same sex couples.* Tiago Fidalgo Freitas and Diletta Tega.

### Cases

- Resolution of the DGRN of July 29, 2005.
- Resolution 198/2012 of the Constitutional Court of Spain.