

Is Holy Matrimony Valid?

When two people marry, they agree to enter a state of matrimony as Husband and Wife. A question may arise as to the validity of this new status based upon verifiable events, and the belief that they are married.

Matrimony under Canon law is an ancient and uniquely binding relationship. Although, the Church may be called on to facilitate such an alliance, the bond of the union is dependent upon the authority of God and the free consent of two people who enter into matrimony. It is their agreement or matrimonial contract that binds them in accordance with Canon law. As with all contracts, they must include terms, conditions and a remedy for resolution of the agreement, and they may require two or more witnesses¹ and public documentation of this contract. Churches even post bands and restrict the rite of marriage often far more than other governments.

"Marriage is defined to be a covenant between a man and a woman, in which they mutually promise cohabitation and a continual care to promote the comfort and happiness of each other. It is an institution of God, and a very honorable state. The Saviour honored it by his presence, and at such a solemnity wrought his first miracle: Buck Theo. Dictionary, 261, Lonas v. The State, 50 Tenn. 287, 308.

In Canon law every man belongs to the Family, and the governments they choose to elect are representative in nature and titular in office. Under Canon law the power of choice remains in the hands of the Family unit, with societies standing ready to supply voluntary support, arbitration and remedy under the guidance of Canon law, which is defined as the will of God. Canon law is not merely the common opinion of the people, but by definition must be in agreement with the opinion of God. Resolution of disputes with mercy and justice is not a prerogative, but a duty.

During the last century civil authorities have offered a system of state issued marriage licenses to assist in the binding of couples in marriage. There has been a clear need for this to avoid what is sometimes called a "limping marriage", one without remedy. State courts are designated to settle the resolution of disputes that may arise. The state in its desire to accommodate a large cross section of its citizens have chosen to make marriage less and less binding and divorce a readily available option.

The Church and its members find this repugnant to their faith. They recognize that the State has the right to establish the nature of its marriage unions, but the Church has long held a more permanent view of marriage.² For this and other reasons Church groups offer the validation and solemnization of rites of matrimony as Husband and Wife.

"The codex iuris canonici speaks with a certain scorn of the civil marriage as 'matrimonium civile ut aiunt', and sincere adherents of the Roman or the Eastern church must regard a civil contract concluded before a civil registrar, usually in a business-like fashion, as an act of irreverence to the Holy Sacrament."³

But still the validation and solemnization of the marriage union is just as important to the Church as it is to the State. In Holy Matrimony, solemnized by the rites of the Church, before witnesses and congregations of the people, the Man and the Woman are fully married in the eyes of God and the people of the community and the State by mutual witnessed and recorded agreements and other documents.

Holy Matrimony is not a marriage under common law as it is often defined today. Common law marriages are defined as "Ones not solemnized".⁴ Common law marriage is distinctly not a "ceremonial marriage." Such marriages *present no public record* such as witnessed marriage certificate, contracts or permission to marry. Although cohabitation alone does not amount to common law marriage; the couple in question merely *hold themselves out to the world* to be husband and wife. This is not the case with Holy Matrimony as a rite of the Church for many, many centuries.

¹ Deuteronomy 19:15 .. or at the mouth of three witnesses, shall the matter be established.

² Mark 10:9 What therefore God hath joined together, let not man put asunder.

³ The Law Reform Commission(1985) Report on Private International Law Aspects of Capacity to Marry and choice of Law in Proceedings for Nullity of Marriage. The Law Reform Commission Ardilaun Centre, 111 St Stephen's Green, Dublin 2.

⁴ Black's Law Dictionary, 3rd Edition.

“To solemnize, spoken of a marriage, means no more than to enter into a marriage by contract, with the publication, before third persons, for the purpose of giving it notoriety and certainty; which may be before any person, relatives, friends, or strangers, competent to testify to the facts.”⁵

The solemnization of marriage has long been the province, duty and responsibility of the Church. It has been an essential part of the liturgy⁶ of the Church for thousands of years. Although, no law can be made, in the United States, prohibiting the free exercise of the religious rites of matrimony, in some nations rites of Holy Matrimony may be considered invalid. But could this invalidate the marriage itself? The more common opinion is that it cannot.

“One social factor should be considered in this context. In a number of countries it is necessary to marry in a secular, civil form of marriage; a marriage celebrated according to religious rites will be invalid (and, in certain instances, when contracted before the civil ceremony, will involve the parties or the clergyman in the commission of a criminal offense). Reference to the personal law of the parties as an alternative to the *lex loci celebrationis*⁷ may save the validity of such a religious marriage.”⁸

Any law that allowed a religious rite to invalidate the union of matrimony itself would be void in a free country, like the United States, “... since there is religious freedom in this country.”⁹

What is the *Lex Fori*¹⁰ of the agreement? Where do we find a remedy for these agreement? According to the ancient and Holy Testaments,¹¹ many systems of modern law, and Canon Law, there are many ways to solemnize two people as Husband and Wife.

By deciding not to obtain a State license to marry, the couple does not invalidate the fact that they are married in the law. No agency should automatically treat a marriage as void simply because they have not obtained statutory or civil license without doing an injustice to religious accommodations of a free State. Ceremonies of marriage, as a religious ritual in a well organized Church, are a valid solemnization. In fact the state has long recognized the religious rite of marriage under Canon law as valid.

“It is well established that the failure to procure a marriage license does not have the effect of rendering the marriage void. The requirement of the license preliminary to marriage is wholly of statutory origin ... When a marriage has been proven there is a presumption in favor of its continuance.” *Browning v. Browning*, 224 Md. 399 (1960)

A married couple must be presumed married unless evidence that they are not married can be produced. The regulatory purpose of a state marriage license requirement cannot be enforced by “the radical process of rendering void and immoral a matrimonial union otherwise validly contracted and solemnized.”¹² But in any case the Holy matrimony unlike common law have both a contract and solemnization.

In many states, including recent decisions, it has been ruled that:

“... failure to procure a license does not invalidate a ceremonial marriage.”

“In affirming the marriage as valid, the Court relied on the common law principle that a marriage without a license is universally held to be valid in the absence of an express declaration by the Legislature that such a marriage is void. *Hollopeter*, 52 Wash. at 45; see *Weatherall v. Weatherall*, 63 Wash. 526, 529, 115 P. 1078

⁵ *Dyer v. Brannock*, 66 Mo. 410, 27 Am Rep 359; *Pearson v. Howey*, 11 N. J. Law, 19; *Bowman v. Bowman*, 24 Ill. App. 172. Black’s 3rd.

⁶ Liturgy is from the Greek word *leitourgi* and *leitourgos*, meaning *public service*.

⁷ *Lex Loci*, Law of the place.

⁸ The Law Reform Commission(1985) Report on Private Ineternational Law Aspects of Capacity to Marry and choice of Law in Proceedings for Nullity of Marriage. The Law Reform Commission Ardilaun Centre, 111 St Stephen’s Green, Dublin 2.

⁹ Clark’s Summary of American Law. Chapt I §2. The marriage status or relationship. pp. 140.

¹⁰The Latin word *fori* means forum. *Lex fori* means the law of the state, county, or jurisdiction.

Lex loci contractus means the law of the place where a contract is made.

¹¹Mark 10:8 And they twain shall be one flesh: so then they are no more twain, but one flesh. [Matthew 19:6]

¹²*Feehley v. Feehley*, 99 A. at 665.

(1911) (absence of license or failure to properly file a license would not invalidate a marriage otherwise valid.)”

“The rule stated in *Hollopeter* remains the rule today. In the eyes of the common law, marriage is a civil contract. As Blackstone put it, the law treats marriage ‘as it does all other contracts: allowing it to be good and valid in all cases, where the parties at the time of making it were, in the first place, willing to contract; secondly, able to contract; and, lastly, actually did contract, in the proper forms and solemnities required by law.’ *Picarella v. Picarella*, 20 Md. App. 499, 316 A.2d 826, 832, n.10 (1974), quoting 1 William Blackstone Commentaries, Book I, ch 15, section 433. Lewis’s Ed.”¹³

“The policy favoring valid marriages is strong. It justifies recognition of an unlicensed ceremony unless the licensing statute plainly makes an unlicensed marriage invalid. See e.g., *Carabetta v. Carabetta*, 438 A.2d 109, 112-113, 182 Conn. 344 (1980).”¹⁴

The same court went on to say, “We are aware of no authority for declaring a marriage to be valid for some purposes but not for others.” If a marriage is valid for one purpose it must be valid for all purposes. This principle is not limited to States but has been long accepted in international law.

“It may be argued that our law should adopt an approach which would tend to uphold as valid marriages unions entered into by persons with a genuine matrimonial commitment. Too zealous an adherence to ‘black-letter’ private international law rules at the expense of a sound regard to the human realities of the situation would be socially damaging and potentially unjust. The favor matrimonii principle reflects the policy that marriages ‘should be held to be valid unless there is some good reason to the contrary.’”¹⁵

What the Church has done for centuries is create and establish documents that are validated “using the chain authentication method”. The Church recognizes that “Matrimony ought to be free”¹⁶ and is essentially a religious act. If someone marries by Holy Matrimony rather than with an application for civil license, are they still married in the eyes of most States?

“If a ceremonial marriage is in fact established by evidence or admission it is presumed to be regular and valid, and the burden of showing that it was an invalid marriage rests on the party asserting its invalidity.”
Overton v. Overton, 260 N.C. 139, 143

In Holy Matrimony, in accordance with the Rites of the Church, there is a license to marry. The Family gives recorded permission for a member of a family to marry. By that recorded permission of the Family to marry, the Church, the parties, and witnesses formerly recognize, document and publish the natural order of this sacred and solemnized relationship and the duties incumbent upon them and society. The individuals marry in agreement, and the people bear witness, and, the Church publishes a record to all.

The State, as a civil government, defines by statute its offered form of marriage as civil contract.¹⁷ If the State is a party to a contract it has every right and even an obligation to define the terms of that contract by statute. But no State of the United States can impair the natural right of free individuals to contract, nor compel only certain contracts.¹⁸ If no one is allowed to marry unless they enter into a civil contract with the State, then there is no religious freedom.

¹³ Superior Court of Appeals Division I, State of Washington, Opinion Information Sheet, Docket Number: 42647-8-I, Title of Case: State of Washington, Respondent v. Mark Denton, Appellant, 08/30/1999.

¹⁴ Superior Court Court of Appeals Division I, State of Washington, Opinion Information Sheet, Docket Number: 42647-8-I, Title of Case: State of Washington, Respondent v. Mark Denton, Appellant, 08/30/1999.

¹⁵ English Law Commission Working Paper No. 89 and Scottish Law Commission Consultative Memorandum No. 64, Private International Law: Choice of Law Rules in Marriage, para. 2.35, clause (e) (1985).

¹⁶ *Matrimonia debent esse libera*. Halkers, Max. 86; 2 Kent, Comm. 102.

¹⁷ 106.010 Marriage as civil contract; age of parties. Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150. [Amended by 1965 c.422 §1; 1975 c.583 §1]

¹⁸ Section 10 - Powers prohibited of States; No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Can or does the State say that an individual is not married because they did not obtain a civil license to marry? If they do not have a civil contract, are they married? Does the State already agree that an individual has a valid marriage even without an application for a civil license? Some state may but other states have no statute that provides that a marriage is void when no license is obtained.

“Marriage license statutes are merely directory and not mandatory and although the sections provides for the procurement of a license by those contracting marriage, Arkansas has no statute providing that a marriage is void when no license is obtained.” Wright v. Vales, 1 Ark. App. 175, 613 S.W. 2d 850 (1981).

Using Oregon as an example, we find that often the State makes provisions to go out of its way to claim marriage with out authorization is in fact valid depending on other factors.

If there is religious freedom in this country a marriage remains valid according to ORS 106.150 of the same statutes under certain conditions.

106.150 Form of solemnization; witnesses; solemnization before congregation. (1) In the solemnization of a marriage no particular form is required except that the parties thereto shall assent or declare in the presence of the clergyperson, county clerk or judicial officer solemnizing the marriage and in the presence of at least two witnesses, that they take each other to be husband and wife.

(2) All marriages, to which there are no legal impediments, solemnized before or in any religious organization or congregation according to the established ritual or form commonly practiced therein, are valid. In such case, the person presiding or officiating in such religious organization or congregation shall make and deliver to the county clerk who issued the marriage license the certificate described in ORS 106.170. [Amended by 1979 c.724 §5; 2001 c.501 §2]

While there is a requirement in some states to apply for a license in order to enter into a civil contract of marriage with the State there is often no statutory obligation to enter into such contract in order to become married. There appears to be numerous ways in which two individuals may solemnize the status of being married.

Is a truly recorded, witnessed, and solemnized Church marriage valid in the eyes of the State? The State can make rules concerning validating State civil licensed marriages and does. It also clearly recognizes that clergy of a congregation may be authorized by the congregation or the Church to solemnize a marriage. According to Section 1. ORS 106.120 (1)(d) of Title 11, of the Oregon Revised Statutes:

(1)Marriages may be solemnized by: (d) A clergyperson of any religious congregation or organization who is authorized by the congregation or organization to solemnize marriages.

The State may make rules about the state solemnization of their contract and license. But in 106.150 no particular form is required. The couple simply assents to the agreement to marry and declares in the presence of the clergyperson that there are no legal impediments according to the established ritual or form commonly practiced by their congregation and Church, then such marriage is deemed valid.

If the couple has applied for a civil marriage license, with the State of Oregon, the clergyperson shall deliver it to the county clerk. If they have not chosen to enter into a three party contract¹⁹ with the civil authority, their marriage as a natural domestic relationship is not invalidated. They should take at least an equal care and precaution, if not more, to authenticate, solemnize and validate their married status with witnesses, and the publication of documents.

This is verified by many cases and statutes. As an example:

ORS 106.130 Validity of marriage solemnized by unauthorized person. A marriage solemnized before any person professing to be a judicial officer of this state, a county clerk or a clergyperson of a religious congregation or organization therein is not void, nor shall the validity thereof be in any way affected, on account of any want of power or authority in such person, if such person was acting at the time in the office or the capacity of a person authorized to solemnize marriage and if such marriage is consummated with the

¹⁹ "Marriage is a civil contract to which there are three parties - the husband, the wife and the state.", Van Koten v. Van Koten. 154 N.E. 146.

belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.
[Amended by 1979 c.724 §4; 2001 c.501 §5]

Note that the critical factor is "consummated with the belief on the part of the persons so married". The critical factor is belief which validates the lawful joining in marriage. This belief must be made public and society, the Church and civil governments have a broad range of methods and practices used to make that belief known to society and the world. Parties are often asked to bind their conscience with oaths, affirmation or some solemn recognition that the truth is required in their testimony before society.

The state of being married is not merely a contract but a status, fundamental to society. As a fundamental and primal status of Man and Woman as Husband and Wife from which all society is born, the status of being married is not created by society, but is in fact it is the creator of society.

"Marriage is more than a contract; it is a status, and thus it is supremely important that its stability shall be secured; its contraction must be surrounded by safeguards and its sanctity upheld. Marriage is an institution of society and its foundation; it does not come from society, but contrariwise, it is the parent of society, and every solemnization of marriage should be in the face of the public; there should be no secrecy." Blythe Estate (1890) 4 Cof 162. Moxy Estate (1903) 4 Cof 369.

A married couple within the Church who seek the righteousness of Christ are obliged to bear witness to society and the world of the solemnization of their status as Husband and Wife. They may cite numerous state, federal, and even international laws, including Title 11, ORS sec. 106.130; as well as, *Browning v. Browning*, 224 Md. 399 (1960); *Overton v. Overton*, 260 N.C. 139, 143; *State of Washington, v. Mark Denton*, Appeal; or, Private International Law. They may continue the record in declarations or affidavit to verify an unbroken chain of authentication to the public.

There is a serious problem with a right of any government agency or institution to denounce the validity of the union of marriage with equal documentation, particularly after being solemnized by the religious clergyperson of a congregation continuously associated with the Church, without, said agency or institution, violating other statutes and regulations regarding religious discrimination and providing timely religious accommodations.