

## DOMESTIC RELATIONS

## CHAPTER 517

## MARRIAGE

## 517.01 MARRIAGE A CIVIL CONTRACT.

On evidence that mother-in-law actively and maliciously interfered to prevent reconciliation between plaintiff and her husband, defendant's son, verdict for damages for alienation of the son's affections sustained. So long as husband keeps his part of the marriage contract, he is entitled to the society and affection of his wife without interference from anyone. *Ruble v Ruble*, 203 M 399, 281 NW 529.

It is the settled policy of Congress to permit personal and domestic relations of Indians with each other to be regulated according to their customs and laws. A different rule prevails with reference to marriages of tribal Indians from that which prevails among ordinary citizens. The government permits the Indian tribes to regulate their own domestic affairs and to control the intercourse between the sexes by their own customs and usages. *Rogers v Cordingley*, 212 M 548, 4 NW(2d) 627.

A married person was not eligible to contract a common-law marriage when those marriages were recognized in Minnesota. Since common-law marriages were abolished by L. 1941, c. 459, before defendant obtained a divorce from his lawful wife, no marriage relation could exist between the parties to this action by virtue of their living together during his marriage, ostensibly as man and wife. *Baker v Baker*, 222 M 169, 23 NW(2d) 582.

Ante-nuptial agreement by parties to a marriage that the contemplated marriage is to be terminable at some future time or is to be effective only for a limited purpose is void as contrary to public policy. *Safranski v Safranski*, 222 M 358, 24 NW(2d) 834.

Marriage of juvenile dependent ward under care of St. Cloud orphanage, but who had attained the age of 16 years, was not invalid because performed without consent of legal guardian of ward's person. OAG Nov. 13, 1945 (300-A).

A common-law wife, whose marriage was contracted prior to April 27, 1941, has the same rights as a wife whose marriage has been solemnized. OAG April 8, 1947 (300-f).

Courts of domestic relations. 5 MLR 161.

Validity of proxy marriage celebrated in a foreign country between foreign resident and resident of the state. 9 MLR 78.

Fraudulent inducement to enter into void marriage; illegality of the act as a defense to an action for deceit. 13 MLR 510.

Law of evidence in family relations. 13 MLR 675.

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16 MLR 172.

Common-law marriage; creation by cohabitation and reputation after removal of impediment. 18 MLR 86.

Declaration judgment regarding marriage status. 18 MLR 883.

Separation agreements; implied condition that wife be chaste. 19 MLR 218, 243.

Common-law marriage a problem in social security. 22 MLR 177.

Age of majority in females in Minnesota. 23 MLR 851.

**517.02 PERSONS CAPABLE OF CONTRACTING.**

The words "under age" in the statute relating to issuance of marriage licenses relates to legal rather than marriageable age. The attorney general, 1930 OAG 306, adopted that construction. As used in section 517.08 "age" means legal age. (Clarified by L. 1939, c. 243.) *Lundstrum v Mample*, 205 M 95, 285 NW 83.

The quality of a marriage, as to its being void or voidable, is to be tested by the law of the place where the ceremony was performed. The common law rule is that a marriage, where one of the parties is under the age of consent, but otherwise competent, is not void but merely voidable. *Von Felden v Von Felden*, 212 M 54, 2 NW(2d) 426.

Where a statute prohibits a minor from marrying, a court does not have power to make an order contrary to the statute. OAG Oct. 18, 1943 (300-A).

A female ward of an orphanage, placed there by order of the juvenile court, and over 16 years of age, was legally married although the orphanage did not consent. OAG Nov. 13, 1945 (300-D).

Domestic relations. 22 MLR 230.

Age of majority for females. 23 MLR 853.

**517.03 MARRIAGES PROHIBITED.**

Amended by L. 1947 c. 623 s. 1.

One adjudged an incompetent and under guardianship as such may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. The validity of a marriage is not affected by the fact that the license was procured by fraud or perjury. The validity of a marriage celebrated in Iowa between residents of Minnesota is governed by the laws of Iowa. *Johnson v Johnson*, 214 M 462, 8 NW(2d) 620.

A married person was not eligible to contract a common-law marriage when those marriages were recognized in the state. Since common-law marriages were abolished in Minnesota before defendant obtained a divorce from his lawful wife, no marriage relation could exist between the parties to this action by virtue of their living together during his marriage, ostensibly as man and wife. *Baker v Baker*, 222 M 169, 23 NW(2d) 582.

The court will not presume that a second marriage, while first wife was living, was bigamous merely because, as stipulated by children of first and second marriages, there was no record of a divorce "so far as can be ascertained or is known to defendants herein." There is a strong presumption of validity of a marriage and of legitimacy of the children of such marriage. The presumption of continuance of husband's first marriage is not as strong as presumption of legitimacy of children of his second marriage. *Modern Woodmen v Barnes*, 61 F. Supp. 660.

A boy under 18 cannot secure a marriage license even with parents' consent. 1942 OAG 92, Aug. 13, 1942 (300-a).

A marriage license may not be issued to a feeble-minded person who has been sterilized. 1942 OAG 94, Feb. 9, 1942 (300-j).

The six-months period found in section 517.03 runs from the date of the judgment in district court. OAG March 11, 1944 (147-G).

Persons married in a foreign country and experiencing difficulty in obtaining proof of the marriage may remarry in Minnesota. OAG Dec. 26, 1945 (300).

Presumption of divorce from former spouse. 6 MLR 599.

Injunction against remarriage prohibited by statute and decree. 10 MLR 255.

Validity of marriage between first cousins. 12 MLR 70.

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16 MLR 172.

Annulment of marriages. 16 MLR 398, 406.

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Effect of marriage on jurisdiction over minors. Jurisdiction of juvenile court. 22 MLR 285.

## **517.04 WHO MAY SOLEMNIZE.**

To solemnize a marriage ceremony the minister need not be ordained. It is sufficient if he is licensed and has filed his credentials. OAG Aug. 21, 1940 (300-c).

Upon filing their credentials, commissioned officers of the Salvation Army may perform the marriage ceremony. OAG Jan. 17, 1944 (300-c).

## **517.06 PARTIES EXAMINED.**

A clerk of court may not knowingly issue a license, nor may a clergyman or magistrate knowingly perform a ceremony of marriage of persons not legally qualified. The purpose of the license act is to require a certain degree of investigation and examination. 1942 OAG 92, Aug. 13, 1942 (300-a).

## **517.07 LICENSE.**

One adjudged an incompetent and under guardianship as such may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. The validity of the marriage is not affected by the fact that the license was procured by fraud or perjury. The validity of a marriage celebrated in Iowa between residents of Minnesota is governed by the laws of Iowa. Johnson v Johnson, 214 M 462, 8 NW(2d) 620.

A marriage license issued to a woman by the issuing authority of the county in which she resides may be used anywhere in the state. OAG April 6, 1936 (300-m).

The only marriage authorized in Minnesota is a ceremonial marriage, and issuance of a license is a prerequisite. OAG April 22, 1946 (300-A).

## **517.08 APPLICATION FOR LICENSE.**

The fact that the marriage license was procured by fraud or perjury does not affect the validity of the marriage. Johnson v Johnson, 214 M 462, 8 NW(2d) 620.

Five day waiting period. 16 MLR 90.

Age of majority of females. 23 MLR 851.

Minimum age at which persons may be licensed to marry. 24 MLR 249.

## **517.09 CEREMONIAL REQUISITES.**

Unless the female party is pregnant at the time of the application for license, a proxy marriage cannot be performed. OAG July 18, 1945 (300).

## **517.11 OFFICIATING PERSON SHALL RECORD CERTIFICATE.**

A woman in Scott county obtained a license to marry a man said to reside in another Minnesota county. The parties were married in Texas, a common-law marriage state. The marriage certificate was forwarded to the clerk of court of Scott county. It is the duty of the clerk to record the certificate. It is not for the clerk to pass on the validity of the marriage. 1944 OAG 69, April 17, 1943 (300-D).

## **517.18 MARRIAGE AMONG QUAKERS.**

Amended by L. 1947 c. 66 s. 1.

## **517.19 ILLEGITIMATE CHILDREN.**

Legitimation of illegitimate child in foreign state, as affecting descent and distribution of decedent's estate. 31 MLR 94.