DOMESTIC RELATIONS

CHAPTER 517

MARRIAGE

517.01 MARRIAGE A CIVIL CONTRACT

Extent to which the common law concept of the unity of husband and wife and its consequences have been abrogated in Minnesota by the Married Women's Act and related statutes. 32 MLR 262.

Separate legal existence at common law and under the Minnesota statutes. 32 MLR 263.

Constitutional obligations to the community property statute. 32 MLR 639.

Artificial insemination. 33 MLR 145.

Personal torts between spouses; effect of annulment on right of recovery. 33 MLR 199.

Marriage; quasi contract; remedy of putative wife. 33 MLR 321.

Marital deduction; estate tax. 36 MLR 50.

Estate planning. 36 MLR 59.

Marital evidentiary privileges in Minnesota. 36 MLR 251.

Mental incompetency. 36 MLR 179.

Minnesota minors entering into a marriage ceremony in Iowa, but as the husband was 20 years old and wife about the same age, the husband was entitled to an annulment on the ground of non-age. Von Felden v Von Felden, 212 M 54, 2 NW(2d) 426.

Where during marriage a wife had received $900 of her husband's money as bailee, and, by stipulation adopted in the findings of the court subsequently divorcing the parties, the wife agreed to accept $5,000 as financial settlement and to relinquish all her right, title, or interest in her husband's property of any kind or nature, the wife is required to return the $900 to her husband. Holmberg v Holmberg, 235 M 424, 51 NW(2d) 598.

The validity of a marriage, in the absence of legislative declaration, is not affected by the fact that the license to marry was obtained by fraud or perjury. Kinkead's Estate, ... M ....., 57 NW(2d) 628.

A common law wife has the same rights as a wife whose marriage has been solemnized if the common law marriage was contracted prior to April 22, 1941. OAG April 8, 1947 (300-F).

517.02 PERSONS CAPABLE OF CONTRACTING

HISTORY. Amended, 1949 c 374 s 1.

A female may marry at the age of 16 years with the consent of her parents or guardian and a female person of the full age of 15 years may marry with the consent of her parents or guardian, and if her application is approved by the judge of the juvenile court in the county in which she resides. Juvenile court in Wilkin county, Minnesota, would have no jurisdiction over a North Dakota resident. OAG Sept. 24, 1948 (300-A).

A marriage license may not be issued without the consent of the parents to a minor female who has refused and refuses to live with her parents, both living together and not divorced. OAG Dec. 4, 1951 (300-A).

517.03 MARRIAGES PROHIBITED

Prohibited marriages. 33 MLR 40.

Re intermarriage after marriage has been adjudged a nullity. 33 MLR 40.

The prohibition against marriage between kin does not apply to kin by adoption. OAG Aug. 16, 1951 (300-G).

The relationship of cousin to a daughter of a cousin is that of "first cousin once removed" and marriage between such persons is forbidden. OAG Feb. 26, 1953 (300-G).

An insane person is incapable of contracting marriage; but the fact that a person had been committed to a hospital for the insane and subsequently discharged does not in itself establish present insanity. It is the duty of the clerk of court to pass upon whether an applicant for a marriage license, or the intended spouse, is or is not insane. It is a fact question for the clerk to determine. OAG Oct. 27, 1948 (300-M).

A party who has been divorced may; within and before the expiration of a six-month statutory period during which an act of remarriage to another is expressly prohibited by statute, make a valid contract to marry a third party when such contract by its terms is to be consummated after expiration of the statutory period. Kugling v Williamson, 231 M 135, 42 NW(2d) 534.

The validity of a marriage normally is determined by the law of the place where the marriage is contracted. If valid by that law the marriage is valid everywhere unless it violates a strong public policy of the domicile of the parties. In the absence of a legislative declaration to the contrary the validity of a marriage is not affected by the fact that the marriage license was obtained by fraud or perjury. In re Kinkead's Estate, ... M ....., 57 NW(2d) 628.

A marriage which violates the provisions of section 517.03 because contracted within six months after one of the parties had been divorced from a former spouse is not void and cannot be attacked collaterally in proceedings to probate a will. In re Kinkead's Estate, ... M ....., 57 NW(2d) 628.

The sole purpose of Laws 1941, Chapter 459, was to abolish common law marriages contracted after April 26, 1941, and the amendment is not applicable to a ceremonial marriage for which a license had been obtained although it was obtained by fraud or perjury. In re Kinkead's Estate, ... M ....., 57 NW(2d) 628.

A licensed lay minister not ordained may perform marriages if he has filed with the clerk of the district court a copy of his credentials of license as certified by the officers of the church society. OAG May 16, 1950 (300-E).

517.05 CREDENTIALS OF MINISTER

Section 517.10, as amended by Laws 1949, Chapter 374, outlines the duties of the person solemnizing the marriage. If the copies of the marriage certificate delivered to each of the contracting parties contains the information set forth in section 517.10, as amended, that statute is satisfied. Nothing less will suffice; nothing more is required. There is no provision for an endorsement upon the certificate. The place where such credentials are recorded shall be endorsed upon and recorded with the certificate so filed with the clerk for record. OAG May 5, 1949 (144-B-17).

A licensed minister who has been employed and certified as such by a church organization and who has filed a copy of his credentials of license with the clerk of the district court for record, may perform the marriage ceremony even though he has not been especially schooled or ordained as a minister of the gospel. OAG May 16, 1950 (300-C).

517.07 LICENSE

Circumstances govern the reasonable time within which a marriage license remains valid after its issuance. OAG May 19, 1947 (300-M).

The law imposes upon the clerk of court the determination as to whether or not the woman named in a marriage license is a resident of his county. It is immaterial what her post office address may be. The clerk must also determine whether the male is 21 years of age and the female 18. The exact age is not necessary information. He is not interested in the date of birth except to determine the age. The clerk makes his determination upon the statement of the applicant, on the written application, or from such other sources available to him. The place where the marriage was performed must be stated in the certificate. OAG Oct. 13, 1949 (300-M).

No duty rests upon the clerk of the district court to advise non-residents of the state, married outside of the county issuing the license, that they have failed to comply with the law. OAG April 18, 1951 (300-D).

For the purposes of remarriage by the same parties, a marriage license may be issued in case the validity of a prior marriage is in doubt, or where there is any difficulty in establishing the fact that the prior marriage had taken place. It may not be issued for use in a religious marriage ceremony when a prior marriage had taken place. OAG Aug. 25, 1952 (300-M).

517.08 APPLICATION FOR LICENSE

HISTORY. RS 1851 c 65 s 8; PS 1858 c 52 s 8; GS 1866 c 61 s 8; GS 1878 c 61 s 8; GS 1894 s 4775; RL 1905 s 3559; 1931 c 401 s 1; 1939 c 243 s 1; 1949 c 374 s 1; 1951 c 700 s 1.

A marriage contracted by a minor without the consent of his parents is valid until annulled. Raske v Raske, 92 F. Supp. 348.

If the parents are living together and are not divorced, a marriage license may not be issued to a minor female who has refused and refuses to live with them, without the consent of the parents. OAG Dec. 4, 1951 (300-A).

The fee of the court commissioner in examining a petition for waiver of the waiting period before issuance of a marriage license is $1. The fee for entering the order is 50 cents. OAG Nov. 28, 1947 (128-B).

Where the consent of parents or guardians to the marriage of any person is necessary it may be given by appearing before the clerk in person or by certifying consent by a document attested by two witnesses and properly verified. OAG Sept. 19, 1947 (300-M).

An insane person is incapable of contracting marriage but the fact that a person has been committed to a hospital for the insane and subsequently discharged does not in itself establish present insanity. It is the duty of the clerk of court to pass upon the question whether an applicant for a marriage license or the intended spouse is or is not insane. It is a fact question for the clerk to determine. OAG Oct. 27, 1948 (300-M).

The law imposes upon the clerk of court the determination as to whether or not the woman named in a marriage license is a resident of his county. It is immaterial what her post office address may be. The clerk must also determine whether the male is 21 years of age and the female 18. The exact age is not necessary information. He is not interested in the date of birth except to determine the age. The clerk makes his determination upon the statement of the applicant, on the written application, or from such other sources available to him. The place where the marriage was performed must be stated in the certificate. OAG Oct. 13, 1949 (300-M).

The clerk of the district court shall issue a marriage license immediately upon the expiration of the 5-day waiting period. OAG March 16, 1950 (300-M).

The applicant applied for a marriage license within three months of the date of her divorce but after the divorce decree the husband died. The death of the husband

takes away the reason for the six months limitation and the license applied for should be granted. OAG June 1, 1951 (300-M).

The purpose of an examination under oath by the clerk of an applicant for a marriage license is to satisfy himself that there is no legal impediment to marriage. OAG Nov. 7, 1952 (300-M).

"Issued six months after divorce" means after the divorce is effective, not after the date of the decree. OAG Nov. 26, 1952 (300-M).

When consent to a marriage is given by a guardian it is not necessary to secure the consent of the parents of the minor. A judgment in a divorce action does not change the relationship of a parent and child. The divorced father is still one of the parents of a minor child and the same is true of the divorced mother. OAG Feb. 5, 1953 (300-M).

517.09 SOLEMNIZATION

HISTORY. Amended, 1945 c 409 s 1-3; 1951 c 255 s 1; 1951 c 700 s 2.

517.10 CERTIFICATE, WITNESSES

HISTORY. RS 1851 c 65 s 9, 10; PS 1858 c 52 s 9, 10; GS 1866 c 61 s 9, 10; GS 1878 c 61 s 9, 10; GS 1894 s 4777; RL 1905 s 3561; GS 1913 s 7097; 1949 c 374 s 3; 1951 c 700 s 3.

Section 517.10, as amended by Laws 1949, Chapter 374, outlines the duties of the person solemnizing the marriage. If the copies of the marriage certificate delivered to each of the contracting parties contains the information set forth in section 517.10, as amended, that statute is satisfied. Nothing less will suffice; nothing more is required. There is no provision for an endorsement upon the certificate. The place where such credentials are recorded shall be endorsed upon and recorded with the certificate so filed with the clerk for record. OAG May 5, 1949 (144-B-17).

The law imposes upon the clerk of court the determination as to whether or not the woman named in a marriage license is a resident of his county. It is immaterial what her post office address may be. The clerk must also determine whether the male is 21 years of age and the female 18. The exact age is not necessary information. He is not interested in the date of birth except to determine the age. The clerk makes his determination upon the statement of the applicant, on the written application, or from such other sources available to him. The place where the marriage was performed must be stated in the certificate. OAG Oct. 13, 1949 (300-M).

517.11, 517.12 Repealed, 1951 c 700 s 5.

517.13 PENALTY FOR FAILURE TO DELIVER AND FILE CERTIFICATE

HISTORY. RS 1851 c 65 s 12; PS 1858 c 52 s 12; GS 1866 c 61 s 12; GS 1878 c 61 s 12; GS 1894 s 4779; RL 1905 s 3536; GS 1913 s 7100.

517.14 ILLEGAL MARRIAGE; FALSE CERTIFICATE; PENALTY

HISTORY. RS 1851 c 65 s 13; PS 1858 c 52 s 13; GS 1866 c 61 s 13; GS 1878 c 61 s 13; GS 1894 s 4780; RL 1905 s 3564; GS 1913 s 7101.

517.15 BY UNAUTHORIZED PERSONS; PENALTY

HISTORY. RS 1851 c 65 s 14; PS 1858 c 52 s 14; GS 1866 c 61 s 14; GS 1878 c 61 s 14; GS 1894 s 4781; RL 1905 s 3565; GS 1913 s 7102.

517.16 IMMATERIAL IRREGULARITY OF OFFICIATING PERSON NOT TO VOID

HISTORY. RS 1851 c 65 s 15; PS 1858 c 52 s 15; GS 1866 c 61 s 15; GS 1878 c 61 s 15; GS 1894 s 4782; RL 1905 s 3566; GS 1913 s 7103.

517.18 MARRIAGE AMONG QUAKERS; BAHA'I'S

HISTORY. RS 1851 c 65 s 16; PS 1858 c 52 s 16; GS 1866 c 61 s 16; GS 1878 c 61 s 16; GS 1894 s 4783; RL 1905 s 3567; GS 1913 s 7104; 1947 c 66 s 1.

517.19 ILLEGITIMATE CHILDREN

Legal settlement for poor relief of mother and illegitimate child was not retroactively affected by marriage to father of the child whose legal settlement was in another county. OAG Sept. 8, 1948 (339-D-3).

CHAPTER 518

DIVORCE

NOTE: Excepted from rules of civil procedure insofar as inconsistent or in conflict therewith.

518.01 WHAT MARRIAGES VOID

Res judicata; full faith and credit for foreign divorce decrees when both spouses are parties. 33 MLR 317.

Law and the disrupted marriage. 35 MLR 168.

Where a defendant in a divorce action, in which she had defaulted, made a showing that her default was induced by intimidation caused by threats and the service without a motion of false and defamatory affidavits, which affidavits charged her with perverted conduct, the trial court was within its sound discretion in vacating the decree entered upon her default, allowing her proposed answer to stand, and setting the case for trial. Under the facts of this case, the lapse of 15 months by defendant before taking action to vacate or modify the default decree did not constitute laches as a matter of law. Berg v Berg, 227 M 173, 34 NW(2d) 723.

After an appellate court has pronounced the judgment or decree in a cause, and has remitted it to the court below for enforcement, and such remittitur has been filed in the lower court, the jurisdiction of the appellate court is completely divested, and it has no authority to recall the remittitur unless there has been some irregularity or error in issuing it; as where it was issued contrary to the rules of the court, or where, by reason of a clerical mistake, it does not correctly express the judgment of the appellate court. Kasal v Kasal, 228 M 570, 37 NW(2d) 711.

The fact that the legislature in one section expressly declared certain prohibited marriages absolutely void leaves a necessary inference that all other prohibited marriages should be valid until set aside by a decree of a competent court. Re Kinkead's Estate, ... M ....., 57 NW(2d) 628.

It is as desirable to reconcile a broken marriage or to solve the problems of alimony in one judicial district as in another. The problem is not unique to one county but affects the whole state and its citizens regardless of location. The 1947 Illinois Domestic Relation's Act purporting to set up a divorce division in the circuit court of Cook county, Illinois, is invalid "as a special law." Hunt v Cook County, 76 NE(2d) 48.

Divorce actions are not specifically excepted from the provisions of section 540.06. Neither does any exception appear in the statute pertaining to divorce actions for annulment. In the absence of a court decision the safe course to pursue in annulment action under sections 518.01, 518.02 or 518.03 would be to have a guardian ad litem appointed for a minor. See 4 MLR 524. OAG June 9, 1948 (147-C).

The relationship of cousin to a daughter of a cousin is that of "first cousin once removed" and marriage between such persons is forbidden. OAG Feb. 26, 1953 (300-G).