

## Chapter 106

### Marriage

#### 106.010

##### NOTES OF DECISIONS

Eye witnesses to the ceremony may supply sufficient evidence of marriage. *State v. Eggleston*, (1904) 45 Or 346, 77 P 738.

**FURTHER CITATIONS:** *Coleman v. Coleman*, (1917) 85 Or 99, 166 P 47; *Leefield v. Leefield*, (1917) 85 Or 287, 166 P 953; *Re Estate of Stewart*, (1924) 110 Or 408, 223 P 727; *In re Estate of Hildenbrand*, (1966) 243 Or 117, 410 P2d 244.

**ATTY. GEN. OPINIONS:** Capacity of one on parole to marry, 1940-42, p 333; capacity of incompetent to marry when he has a guardian, 1926-28, p 132.

**LAW REVIEW CITATIONS:** 3 OLR 28.

#### 106.020

##### NOTES OF DECISIONS

Marriage contrary to the laws of nature as generally recognized in Christian countries, such as involve polygamy and incest, and marriages which local law has declared void, are void and exceptions to the rule that a marriage valid where solemnized is valid everywhere. *Sturgis v. Sturgis*, (1908) 51 Or 10, 93 P 696, 131 Am St Rep 724, 15 LRA(NS) 1034. *But see Leefield v Leefield*, (1917) 85 Or 287, 166 P 953.

Constitutionality of a former statute prohibiting mixed marriages was upheld. *In re Estate of Fred Paquet*, (1921) 101 Or 393, 200 P 911.

One seeking to show invalidity of his marriage because of prior marriage must prove that former spouse is still living and that prior marriage has not been dissolved by divorce. *Marcus v. Marcus*, (1944) 173 Or 693, 147 P2d 191.

Incestuous marriage was valid though invalid where performed when contracted by domiciliaries of this state evading law of domicile. *Leefield v. Leefield*, (1917) 85 Or 287, 166 P 953.

An allegation of attempt to enter a marriage contract with one under disability was insufficient to show marriage for purposes of this section. *Lahey v. Lahey*, (1923) 109 Or 146, 219 P 807.

**FURTHER CITATIONS:** *Wallace v. McDaniel*, (1911) 59 Or 378, 117 P 314, LRA 1916C, 744; *Dibble v. Meyer*, (1955) 203 Or 541, 278 P2d 901, 280 P2d 765; *Emmons v. Sanders*, (1959) 217 Or 234, 342 P2d 125; *State v. Anderson*, (1964) 239 Or 200, 396 P2d 558.

**LAW REVIEW CITATIONS:** 23 OLR 69; 39 OLR 42; 2 WLJ 207-215.

#### 106.030

##### NOTES OF DECISIONS

Concealment from a prospective husband that the wife had some time before been the mother of an illegitimate

child is not such a fraud as would be sufficient cause for annulment. *Smith v. Smith*, (1879) 8 Or 100.

Ward may validly marry in another state against will of guardian. *Sturgis v. Sturgis*, (1908) 51 Or 10, 93 P 696, 131 Am St Rep 724, 15 LRA(NS) 1034.

To warrant annulment under this section, there must be mental incapacity insufficient to comprehend the nature and consequence of the business in which party was engaged, as required for avoidance of other contracts. *Coleman v. Coleman*, (1917) 85 Or 99, 166 P 47.

Sexual intercourse before marriage precludes an annulment on the ground of concealing pregnancy, regardless of paternity. *Westfall v Westfall*, (1921) 100 Or 224, 197 P 271, 13 ALR 1428.

As a practical matter, an annulment of a voidable marriage has the same effect as a divorce. *Dibble v. Meyer*, (1955) 203 Or 541, 278 P2d 901, 280 P2d 765.

Death of either party terminates the right to bring an action for annulment of a voidable marriage. *Id.*

**FURTHER CITATIONS:** *In re Flores*, (1926) 119 Or 550, 249 P 1097; *Holland v. Ribicoff*, (1962) 219 F Supp 274; *State v. Anderson*, (1964) 239 Or 200, 396 P2d 558.

**ATTY. GEN. OPINIONS:** *Out of state marriage of 12 year old female*, 1924-26, p 100; incompetent having a guardian, 1926-28, p 132.

#### 106.041

##### NOTES OF DECISIONS

Failure to find marriage license many years after alleged marriage in sister state does not overcome the presumption of valid marriage. *Ollschlager's Estate v. Widmer*, (1909) 55 Or 145, 105 P 717.

**LAW REVIEW CITATIONS:** 12 OLR 238.

#### 106.060

##### NOTES OF DECISIONS

Status of "child" under juvenile Act is lost by marriage with parental consent. *State v. Eisen*, (1909) 53 Or 297, 99 P 282, 100 P 257.

**ATTY. GEN. OPINIONS:** Effect of majority statute on age at which girl can marry without consent of parents, 1934-36, p 678.

#### 106.071

**CASE CITATIONS:** *Huard v. McTeigh*, (1925) 113 Or 279, 232 P 658, 39 ALR 528.

**ATTY. GEN. OPINIONS:** Authority of chiropractor to certify that a person is free from contagious and infectious diseases, 1966-68, p 153; standards committee applies in reviewing denial of a certificate, (1970) Vol 35, p 15.

LAW REVIEW CITATIONS: 12 OLR 238.

106.090

ATTY. GEN. OPINIONS: Certificates to indigents, 1938-40, p 166.

106.110

LAW REVIEW CITATIONS: 12 OLR 238.

106.120

#### NOTES OF DECISIONS

Marriage at sea to avoid state laws is void. *Holmes v. Holmes*, (1870) 1 Sawy 99, 1 Abb (US) 525, Fed Cas No. 6,638.

Where a ceremony of marriage is shown followed by cohabitation, there is a presumption, which increases with lapse of time, that celebrant was authorized. *In re Estate of Megginson*, (1891) 21 Or 387, 28 P 388, 14 LRA 540.

Marriage is a civil contract, entered into with the consent of the State. *Heisler v. Heisler*, (1936) 152 Or 691, 55 P2d 727.

ATTY. GEN. OPINIONS: Fee for recording authority, 1922-24, p 474; 1928-30, p 295; city recorder's power to solemnize a marriage, 1952-54, p 156; evidence of minister's authority, (1970) Vol 34, p 1027.

106.130

#### NOTES OF DECISIONS

There is a presumption which increases with lapse of time that celebrant of marriage was authorized if he assumed to act as authorized and marriage was in good faith. *In re Estate of Megginson*, (1891) 21 Or 387, 28 P 338, 14 LRA 540; *Johnson v. Baker*, (1933) 142 Or 404, 20 P2d 407.

Presumption that celebrant was authorized is not negated by fact that celebrant was captain of boat when marriage was in good faith. *Johnson v. Baker*, (1933) 142 Or 404, 20 P2d 407.

LAW REVIEW CITATIONS: 12 OLR 331.

106.140

LAW REVIEW CITATIONS: 12 OLR 238.

106.150

#### NOTES OF DECISIONS

##### 1. In general

Observance of statutory formalities is essential to valid marriage. *Holmes v. Holmes*, (1870) 1 Sawy 99, 1 Abb (US) 525, Fed Cas No. 6,638.

Presumption of valid marriage follows its solemnization in good faith. *In re Megginson's Estate*, (1891) 21 Or 387, 28 P 388, 14 LRA 540.

Marriage according to Indian tribal custom is valid where at least one Indian is involved. *McBean v. McBean*, (1900) 37 Or 195, 61 P 418.

Marriage according to Indian tribal custom was recognized as valid as was required by federal statute. *Kalyton v. Kalyton*, (1904) 45 Or 116, 74 P 491, 78 P 332.

The burden of proof is on the party questioning a marriage. *Ollschlager v. Widmer*, (1909) 55 Or 145, 105 P 717.

Marriage according to Indian tribal custom is valid. *Parr v. Colfax*, (1912) 117 CCA 48, 197 Fed 302.

The validity of a proxy marriage could not be raised in a collateral attack. *State v. Anderson*, (1964) 239 Or 200, 396, P2d 558.

#### 2. Common-law marriages

Common-law marriages are not valid in Oregon, the provisions of the marriage statute being mandatory. *Holmes v. Holmes*, (1870) 1 Sawy 99, 1 Abb (US) 525, Fed Cas No. 6,638; *Huard v. McTeigh*, (1925) 113 Or 279, 232 P 658, 39 ALR 528; *Wadsworth v. Brigham*, (1928) 125 Or 428, 259 P 299, 266 P 875; *Bridgman v. Stout*, (1971) 5 Or App 558, 485 P2d 1101; *Huard v. McTeigh*, supra, overruling any recognition of common-law marriage extended by the following cases: *In re Estate of Megginson*, (1891) 21 Or 387, 28 P 388, 14 LRA 540; *Sturgis v. Sturgis*, (1908) 51 Or 10, 93 P 696, 131 Am St Rep 724, 15 LRA(NS) 1034; *Ollschlager's Estate v. Widmer*, (1909) 55 Or 145, 105 P 717 and *Reed v. Harkrader*, (1920) 264 Fed 834. But see *State v. Anderson*, (1964) 239 Or 200, 396 P2d 558 and *In re Mortyr*, (1970) 320 F Supp 1222.

Under statute now repealed, limited recognition of common-law marriage was allowed. *Wadsworth v. Brigham*, (1928) 125 Or 428, 259 P 299, 266 P 875.

Although Oregon does not recognize the validity of common-law marriages, other states do and naturalization should not be denied on the sole grounds that petitioner was making a home with an unmarried man and therefore "not of good moral character" as required by federal law. *In re Mortyr*, (1970) 320 F Supp 1222.

ATTY. GEN. OPINIONS: Marriage by proxy, 1942-44, p 319.

LAW REVIEW CITATIONS: 3 OLR 28; 4 OLR 308.

106.160

#### NOTES OF DECISIONS

Prima facie evidence of legal marriage is furnished by license. *State v. Isenhart*, (1897) 32 Or 170, 52 P 569.

FURTHER CITATIONS: *Ollschlager's Estate v. Widmer*, (1909) 55 Or 145, 105 P 717.

ATTY. GEN. OPINIONS: Right of Veterans Committee to copies of certificate, 1942-44, p 407.

LAW REVIEW CITATIONS: 12 OLR 238.

106.170

ATTY. GEN. OPINIONS: Return by successor justice of the peace of certificate of marriage solemnized by deceased justice of the peace, 1958-60, p 221; validity of marriage where certificate not delivered due to death of justice of the peace solemnizing marriage, 1958-60, p 221.

106.190

LAW REVIEW CITATIONS: 19 OLR 196; 23 OLR 132.

106.210

#### NOTES OF DECISIONS

The marriage was not prohibited by any antimiscegenation statute. *Crawford v. Karr*, (1965) 242 Or 259, 409 P2d 330.

106.990

ATTY. GEN. OPINIONS: Completion and filing of certificate by successor justice of the peace, 1958-60, p 221.