

December 2019

## A Review of the State of the Law on Marriage Evasion

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### Recommended Citation

Carl H. Smith, Jr., *A Review of the State of the Law on Marriage Evasion*, 11 Wyo. L.J. 104 (1957)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol11/iss2/10>

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It would seem better to admit all statements made by persons having accident information, including the participants, but not the accident report itself. Such a rule would hardly discourage the person making the accident report from telling the truth, but at the same time make all vital accident information available at the trial of a civil or criminal action.

WILLIAM W. GRANT

## A REVIEW OF THE STATE OF THE LAW ON MARRIAGE EVASION

In 1912 the Uniform Marriage Evasion Act was approved by the National Conference of Commissioners on Uniform State Laws.<sup>1</sup> The Act has been adopted in five states with slight modifications.<sup>2</sup> The Conference withdrew the Act in 1943, stating that it tended to result in confusion, because so few states had adopted it.<sup>3</sup>

There are no statutes or court decisions which hold that a state will not recognize a valid marriage performed in another state if the marriage could have been validly performed in the state of domicile.

To state the evasion problem concretely, we are concerned with the effect that is given by the several states to a marriage celebrated under conditions where the party or parties leave the state of their domicile in order to evade the laws of the state, and are married in another state in which there is no impediment to their contracting a valid marriage, thereafter returning to the domicile state to live as man and wife. This situation forms the setting for the present article.

There is no doubt of the power of a state to regulate the status of its domiciliaries with regard to marriage. For example, a state has the power

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1. Terry, *Uniform State Laws in the United States* (1920), p. 404.

**"UNIFORM MARRIAGE EVASION ACT"**

Section 1. Be it enacted, etc., That if any person intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.

Section 2. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

Section 3. Before issuing a license to marry to a person who resides and intends to continue to reside in another state the officer having authority to issue license shall satisfy himself by requiring affidavits or otherwise that such person is not prohibited from intermarrying by the laws of the jurisdiction where he or she resides.

Section 4. Any official issuing a license with knowledge that the parties are thus prohibited from intermarrying and any person authorized to celebrate marriage shall be guilty of a misdemeanor, and shall be punished by. . ."

2. Ill. Rev. Stat., c. 89, §§ 19-24 (1951); La. Rev. Stat., Title 9, §§ 221-224 (1950); Mass. Gen. Laws, c. 207, §§ 10-13 (Ter.Ed. 1932); Vt. Rev. Stat., c. 154, §§ 3154, 3155, 4130 (1947); Wis. Stat. § 245.04 (1951).
3. Handbook of the National Conference of Uniform State Law, p. 64 (1943).

to prescribe by law the age at which a person may enter into marriage, the formalities essential to constitute a valid marriage, the duties and obligations which it creates, and its effect upon the property rights of both parties.<sup>4</sup> At an early date, the United States Supreme Court held that marriage is a proper subject for state regulation in the interest of public health, morals and welfare, under the power reserved to the states by the Tenth Amendment of the federal Constitution.<sup>5</sup> Hence, marriage evasion legislation is constitutional. As the Supreme Court of North Dakota recently put it, "A state has the prerogative to regulate by legislation the marital status of its own citizens domiciled therein, to the extent of prohibiting certain marriages on the ground of public policy, and may give effect to such prohibitions in nullifying a marriage performed in violation thereof, though solemnized in another state."<sup>6</sup>

Although marriage is a contract, it is *sui generis* and differs in some respects from all other contracts, so that the rules of law which are applicable in expounding and enforcing other contracts do not necessarily apply to the contract of marriage.<sup>7</sup> The fact that marriage is a *status*, in addition to being a *contract*, adds to the concern which the states feel about this important relationship.

Twenty-three states have statutes which have the effect of recognizing the validity of a marriage celebrated in a sister-state and valid there, even though the parties could not have validly contracted the marriage in their own domicile, and even though they left in order to evade the law of the domicile. These states thus have adopted the common law or so-called General American Rule of conflict of laws.<sup>8</sup> In addition to the states which have adopted the Uniform Marriage Evasion Act, there are seven states that have statutes which produce results similar in effect to the Uniform Act.<sup>9</sup> Another group of states has statutes which provide that sister-state marriages are recognized, unless contrary to the public policy or laws of the state, or words to that effect.<sup>10</sup> Some of the states in the last mentioned category have provisions in their statutes which require residents to register a certificate of marriage with the clerk of the county in

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4. *Heflinger v. Heflinger*, 136 Va. 289, 118 S.E. 316, 32 A.L.R. 1088 (1923); *Wade v. Kalbfleisch*, 58 N.Y. 282, 16 Abb.Prac. (N.S.) 104, 17 Am.St.Rep. 25 (1874); *Cunningham v. Cunningham*, 206 N.Y. 341, 99 N.E. 845, 43 L.R.A. (N.S.) 355 (1912); *In re Caeti's Will*, 207 Misc. 353, 138 N.Y.S.2d 496 (1955); *Beale, Conflict of Laws*, § 132.5 (1935).
  5. *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888); See also *Livingston v. Livingston*, 173 N.Y. 377, 66 N.E. 123, 61 L.R.A. 800, 93 Am.St.Rep. 600 (1903); *Henderson v. Henderson*, 199 Md. 449, 87 A.2d 403 (1952).
  6. *First National Bank in Grand Forks v. North Dakota Workmen's Compensation Bureau*, \_\_\_\_\_ N.D. \_\_\_\_\_, 68 N.W.2d 661 (1955). To the same effect is *McDonald v. McDonald*, 6 Cal.2d 457, 58 P.2d 163, 104 A.L.R. 1290 (1956).
  7. Note 5 *supra*, *Goodrich, Conflict of Laws*, p. 349 (3rd Ed. 1949).
  8. *Goodrich, Conflict of Laws*, p. 351 (3rd Ed. 1949); Arkansas, California, Colorado, Idaho, Kansas, Kentucky, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah and Wyoming are in this category.
  9. Alabama, Arizona, Indiana, Maine, Virginia, Washington, and West Virginia.
  10. Connecticut, Delaware, District of Columbia, Georgia, Minnesota, North Dakota, and Ohio.

which they reside, when they have married outside the state, with the further provision that if the resident has left the state for the purpose of marrying to avoid the prohibition of the statutes of the domicile and with the intention of returning, and if he subsequently does return, the validity of the marriage will be determined by the laws of the domicile.<sup>11</sup> Recent court interpretations of the Uniform Act as well as some of the statutes of states that are concerned with the evasion problem<sup>12</sup> require the bad faith element, the intent to evade the provisions of the statutes, in order for the validity of the marriage to be successfully questioned.

North Dakota has a statute unlike that of any other state. It provides that two nonresidents may not marry within the state except when the parents of either reside there.<sup>13</sup> This would tend to prevent domiciliaries of another state from being married in North Dakota to evade the laws of their own state. Thus it has the same effect as section two of the Marriage Evasion Act.<sup>14</sup>

The remaining states have no statutory provisions on the validity of foreign marriages.<sup>15</sup>

Study of the dates of statutes and court decisions involving the marriage evasion problem does not disclose any current trend either toward or away from the adoption of a marriage evasion policy. The state of the law appears to be static rather than dynamic.

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### THE LICENSE PROBLEM

When the problem is only one of definition, there seems to be no trouble in discovering the exact nature of a license. Lay or legal, dictionaries agree that a license is a permit to do something which would otherwise be illegal.<sup>1</sup>

But the task of determining the nature of a license is not so easy as might at first appear, and is presented to courts in a great many different ways. One of the first problems encountered is the determination of whether a particular license is a right or only a mere privilege. If it is a right, then after it has once been obtained, agencies dealing with the licensee must afford him at least a degree of due process before they can deprive him of that right.<sup>2</sup> If the license is determined to be nothing more

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11. Maine, New Hampshire, and Virginia.

12. Alabama, Arizona, Indiana, Maine, Massachusetts (Note 1 supra), Mississippi, Oklahoma, Pennsylvania, and Utah.

13. N.D. Rev. Stat. § 14-0310 (1943), as amended by House Bill No. 555, c. 120 (1951).

14. Note 1 supra, § 2, Uniform Marriage Evasion Act.

15. Florida, Iowa, Missouri, South Carolina, and South Dakota.

1. Black's Law Dictionary, 4th Ed., p. 1067; Webster's New International Dictionary, 2nd Ed., p. 1425.

2. On this point see 33 Am.Jur. 341.