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IS A MARRIAGE IN WYOMING BETWEEN MINORS WITHOUT PARENTAL CONSENT, VALID, VOID OR VOIDABLE?

It is the purpose of this article to explore the probable status of a marriage in Wyoming when either or both of the participants are minors and the parental consent required by statute has not been obtained.¹ The importance of such exploration shows itself in several ways, for example: rights of a surviving spouse upon the death of the other spouse, alimony, support, the husband-wife privilege in the law of evidence, and the guilt of a defendant in a rape, morals or similar criminal charge. In all the above examples (and others) the decisive issue may very well be the marital status of the parties. As one authority puts it, "marriage involves the rights, privileges, powers, and immunities arising when a man and woman have so far satisfied the procedural requirements as to make it legally correct to say they are husband and wife."² Have the man and woman satisfied the Wyoming procedural requirements when a parental consent is required but has not been obtained?

Let us take two hypothetical situations in which the Wyoming Supreme Court may be asked to determine this status:

I. Suppose B (a male, age 19 years) and G (a female, age 17 years), both Wyoming residents, wish to marry. The parents of one or both are unwilling to consent to the marriage. B and G elope to a county in Wyoming where they are unknown and apply to the County Clerk for a marriage license. In order to obtain the license both B and G intentionally misrepresent their ages to the Clerk, each stating that he, or she, is 21 years old. The license is issued and the couple are married by one authorized to solemnize marriages in Wyoming.

II. Suppose the same facts as in I. above except that B, the male, is age 17 years and G, the female, is age 15 years.

Are these two marriages valid, void or voidable? *Valid* is defined as "having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside."³ *Void* is defined in its strictest sense as "that which has no force and effect, is without legal efficacy, is incapable of being enforced by law."⁴ *Void marriage* is "one not good for any legal purpose, the invalidity of which may be maintained in any proceeding between any parties."⁵ *Voidable* is defined as "that which

1. Wyo. Stat. § 20-3 (1957), which reads: "When either party is a minor, no license shall be granted without the verbal consent, if present, and written consent, is absent, of the father, if living, if not, then of the mother of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness."
2. Keezer, *Marriage and Divorce*, ch. 1, § 1 (1946).
3. *Black's Law Dictionary* (4th ed. 1957); *United States v. McCutchen*, 234 Fed. 702 (D.C. Calif., 1945).
4. *Black's Law Dictionary* (4th ed. 1957); *Webber v. Spencer*, 148 Neb. 481, 27 N.W.2d 824 (1947).
5. *Black's Law Dictionary* (4th ed. 1957).

may be avoided, or declared void; not absolutely void, or void in itself."⁶ A "voidable marriage" is valid for all civil purposes until annulled in direct proceedings.

Marriage is a civil contract⁷ and the law considers marriage in the light of a civil contract at least as far as valid consent and legal capacity are concerned.⁸ In Wyoming, "minors" are of the "legal age of consent," for marriage, when the male is 18 years or over and the female is of the age of 16 years or over.⁹ The Wyoming statutes require that a license to marry must be obtained in order to have a valid marriage,¹⁰ and the Wyoming Supreme Court has held this provision mandatory rather than merely directory.¹¹ As we have already observed, section 20-3 provides that no license shall be granted to "minors" without the consent of their father, if living, or mother or guardian if the father is not living.¹²

Does the word "minor" in section 20-3 refer to males under 18 years and females under 16 years as set out in section 20-2, or does it refer to the usual idea of children (both sexes) under 21 years? Certainly the word used in the liquor statutes and voting requirements is intended to mean a person under 21 years of age. If the Supreme Court were to hold that "minor" in section 20-3 means a person under 21 years, then the couple in both situation I. and II. would be faced with a void or voidable marriage, if the couple did not obtain parental consent. If, however, the Supreme Court were to hold that "minor" meant only children under the ages set forth in section 20-2 (18 for males and 16 for females), then the couple in situation I. would have a valid and binding marriage, and the couple in situation II. would have a void or voidable marriage.

The statutory sections defining void marriages¹³ do not expressly, or impliedly, include under-age marriages¹⁴ or fraudulently obtained licenses. In fact the contrary is true as to marriages in which one party was under marriageable age.¹⁵ The Wyoming statutes provide when and by whom under-age marriages may be annulled.¹⁶ These sections, however, ignore the presence or absence of parental consent where the parties, or one of them, are *above* marriageable age but under 21 years.

In the *Roberts'* case the Wyoming Supreme Court took the position

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6. Black's Law Dictionary (4th ed. 1957; In re Romano's Estate Wash.2d 796, 246 P.2d 501 (1952).
 7. Wyo. Stat. § 20-1 (1957).
 8. *Amsden v. Amsden*, 110 N.Y. Supp.2d 307 (1952); *United States v. Rubinstein*, 326 U.S. 766 (1945).
 9. Wyo. Stat. § 20-2 (1957).
 10. Wyo. Stat. § 20-4 (1957).
 11. In re *Roberts' Estate*, 58 Wyo. 438, 133 P.2d 492 (1943). And see, *Connors v. Connors*, 5 Wyo. 433, 40 Pac. 966 (1895), holding valid a marriage where a license was issued but not recorded as required by statute.
 12. Wyo. Stat. § 20-3 (1957).
 13. Wyo. Stat. §§ 20-18; 20-32 (1957).
 14. In this article the term "under-age marriage" will signify a marriage performed when the man is under 18 years, or the woman is under 16 years, or both.
 15. Wyo. Stat. § 20-33 (1957).
 16. Wyo. Stat. §§ 20-33 to 20-35 (1957).

that the Wyoming statutes dealing with marriage were complete, holding that such provisions as obtaining the license and having two witnesses at the ceremony were mandatory. By so holding Wyoming was placed with the minority states holding such provisions mandatory rather than directory or preventive.¹⁷ This does not mean, however, that *all* the provisions of the marriage statutes in Wyoming are mandatory. On the contrary, Justice Blume, in the *Roberts'* case, recognized that some of the provisions may be mandatory while others are directory only.¹⁸ The statutes and Wyoming Supreme Court decisions do not give us an answer, even by implication, to the problems posed in this article.

Most states have altered the common law of marriage,¹⁹ and there is nothing to indicate that the common law imposed the condition of parental consent. In states which have imposed the condition of parental consent for minors under specified ages, the majority view is that this requirement is merely directory and does not affect the validity of the marriage where the consent was not obtained.²⁰ A minority of states hold that the parental consent requirement is mandatory, and that therefore, in the absence of such consent the marriage is void or voidable.²¹

The section of the Wyoming statute held mandatory in the *Roberts'* case reads in part that a license "must be obtained" and seems to be directed at the applicants.²² The section concerning parental consent reads in part, "a license shall not be issued"²³ and seems to be directed at the County Clerk. If the license is in fact issued without parental consent or with falsely obtained consent what should be the status of the marriage?

It should be remembered that the morals and standards of the community are enhanced and the ends of society served if marriages are regarded as valid and the issue thereof as legitimate. If the marriage has in fact been established, it should be presumed to be regular and valid.²⁴ Absent clear legislative intent, a marriage contracted under the statutory age of consent should not be held void, but voidable by the under-aged

17. 55 C.J.S. Marriage, § 24.

18. *In re Roberts' Estate*, 58 Wyo. 438, 133 P.2d 492 (1943).

19. At common law marriages were considered absolutely void if the parties, or either of them, were under the age of seven years; voidable between the ages of seven years and twelve years for the female, and between seven years and fourteen years for the male; and all other marriages were valid. *Needam v. Needam*, 183 A. 681, 33 S.E.2d 288 (1945); 35 Am. Jur. 103.

20. *Payne v. Payne*, 295 Fed. 970 (C.A., D.C., 1924); *Hitchens v. Hitchens*, 47 F. Supp. 73 (D.C., D.C., 1942); *Campbell v. Campbell*, 78 Call. App. 745, 248 Pac. 762 (1926); *Needam v. Needam*, 183 Va. 681, 33 S.E.2d 288 (1945); *Woodward Iron Co. v. Christensen*, 144 Neb. 763, 14 N.W.2d 613 (1944); *State v. Ward*, 204 S.C. 210, 28 S.E.2d 785 (1944).

21. *Turner v. Turner*, 167 Cal. App.2d 606, 334 P.2d 1011 (1959); *Succession of Mariononi*, 177 La. 592, 148 So. 888 (1933).

22. Wyo. Stat. § 20-4 (1957).

23. Wyo. Stat. § 20-6 (1957).

24. *Marris v. Sockey*, 170 A.2d 599 (10th Cir. 1948); *Feefer v. State*, 42 Ohio 276, 182 N.E. 117 (1931).

participant and subject to ratification.²⁵ The Wyoming statutes provide for such a result and also give the parents of the under-aged minor the right to annul the marriage.²⁶

Therefore, the situation outlined in I., where the boy is 19 years and the girl is 17 years, the marriage should be absolutely valid even without parental consent or with fraudulently obtained consent. Once the license has been issued and the parties, being over the "legal age of consent," are otherwise validly married, public policy should not allow interference with the marital status.²⁷

In the situation described in II., where the boy is 17 years and the girl is 15 years, the marriage should be voidable by either the children or their parents, but only until ratified by free cohabitation after both reach the "legal age of consent."²⁸ From that time on the marriage should be absolutely valid and enforceable. If they separate before both reach marriageable age, then each under-age spouse should have a reasonable time after reaching the marriageable age to begin an annulment suit.

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25. *In re Stopps' Estate*, 244 Iowa 931, 57 N.W.2d 221 (1953); *In re Kinkead's Estates*, 239 Minn. 27, 57 N.W.2d 628 (1953); *Short v. Hotaling*, 225 N.Y.S.2d 53 (1962).

26. Wyo. Stat. §§ 20-33 to 20.35 (1957).

27. Note the unusual result arrived at by a California district court in *Turner v. Turner*, Dist. Ct. of Appeals, 2d District, Calif., 167 Cal. App.2d 606, 334 P.2d 1011 (1959), where the court allowed an annulment to a father who showed the consent given by himself was fraudulently obtained. Dictum in the case indicates, however, that if the child had been over the "legal age of consent" the marriage would have been valid.

28. *Abelt v. Zeman*, --- Ohio ---, 179 N.E.2d 176 (1952).