

MARRIAGE

Marriage, a word from the 14th century French (marier) to marry.

Common-law marriage (or common law marriage), sometimes called informal marriage or marriage by habit and reputation is, historically, a form of interpersonal status in which a man and a woman are legally married. The term is often mistakenly understood to indicate an interpersonal relationship that is not recognized in law. In fact, a common law marriage is just as legally binding as a statutory or ceremonial marriage in most jurisdictions – it is just formed differently.

The idea of common law marriage emerged in medieval England, because clerics and justices who officiated at marriages were not always able to travel to rural locations where some couples lived. In that case, the couple could establish a marriage "by common law."

Many U.S. states that do not have common law marriage, and some that do, have a concept of a "putative spouse". Unlike someone in a common law marriage, a putative spouse is not actually married. Instead a putative spouse believes he or she is married in good faith and is given legal rights as a result of this person's reliance upon this good faith belief. Putative spouse concepts, called "deemed marriages" are also recognized under the Social Security program in the United States.

One nearly universal tradition is that of the engagement ring. This custom can be dated back to the ancient Romans. It is believed that the roundness of the ring represents eternity. Therefore, the wearing of wedding rings symbolizes a union that is to last forever. It was once thought that a vein or nerve ran directly from the "ring" finger of the left hand to the heart.

HISTORY

Throughout human history, people married to arrange child rearing, pass on property and organize life. Until relatively recently, most of these alliances were not legally sanctioned but rather informal arrangements accepted by society at large. The choice of partner was rarely left to the couple; parents and other respected community elders made the match. Marriage was a way of turning strangers into relatives, of making peace, of making permanent trading connections. Marriage was a civil affair to which the Church could give its blessing. In many different languages wives are called the equivalent of the word "peace-weaver".

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The notion of marriage as a sacrament and not just a contract can be traced to St. Paul who compared the relationship of a husband and wife to that of Christ and his church (Eph. v, 23-32).

0400-1399

From the 5th to the 14th centuries, the Roman Catholic Church conducted special ceremonies to bless same-sex unions which were almost identical for those ceremonies to bless heterosexual unions. At the very least, these were spiritual, if not sexual, unions.

0866

Pope Nicholas I declared in 866, "If the consent be lacking in a marriage, all other celebrations, even should the union be consummated, are rendered void." That shows the importance of a couple's consent to marriage. That concept has remained an important part of church teaching through the years.

1076

In 1076, Pope Alexander II issued a decree prohibiting marriages between couples who were more closely related than 6th cousins.

1100

The Twelfth century troubadours were the first ones who thought of courtly love in the same way we do now. The whole notion of romance apparently didn't exist until medieval times, and the troubadours.

1500-1921

In the 16th century, servants and day laborers were not allowed to marry in Bavaria and Austria unless they had the permission of local political authorities. This law was not finally abolished in Austria until 1921.

1520

Although Luther declared that marriage was not a sacrament but a "worldly thing", all the Protestant sects have continued to regard it as religious in the sense that it ought normally to be contracted in the presence of a clergyman. Owing to the influence of the Lutheran view and of the French Revolution, civil marriage has been instituted in almost all the countries of Europe and North America, as well as in some of the states of South America.

1563

There appeared to be many marriages taking place without witness or ceremony in the 1500's. The Council of Trent was so disturbed by this, that they decreed in 1563 that marriages should be celebrated in the presence of a priest and at least two witnesses. Marriage took on a new role of saving men and women from being sinful, and of procreation.

Thereafter, a marriage was only legal in Roman Catholic countries. This was not accepted in the newly Protestant nations of Europe, of course; nor by Protestants who lived in Roman Catholic countries or their colonies in the Americas or elsewhere; nor by Eastern Orthodox Christians.

All Protestant and Eastern Orthodox countries in Europe eventually abolished "marriage by habit and repute", with Scotland being the last to do so, in 2006. Scotland had long been the sole exception in Europe.

1614

The first recorded interracial marriage in North American history took place between Robert Rolfe and Pocahontas in 1614. In colonial Jamestown, the first biracial Americans were the children of white-black, white-Indian, and black-Indian unions. By the time of the American Revolution, somewhere between 60,000 and 120,000 people of "mixed" heritage resided in the colonies. During his presidency, Thomas Jefferson begged Americans to consider "let[ting] our settlements and [Indians'] meet and blend together, to intermix, and become one people"

????-1662

Until 1662, there was no penalty for interracial marriages in any of the British colonies in North America. In 1662, Virginia doubled the fine for fornication between interracial couples. In 1664, Maryland became the first colony to ban interracial marriages.

????-1686

Marriage was strictly a civil and not an ecclesiastical ceremony for the Puritans in Massachusetts Bay until 1686. The Pilgrims outlawed courtship of a daughter or a female servant unless consent was first obtained from parents or master.

Love still wasn't a genuinely necessary ingredient for marriage during this era. It was years later, the Puritans viewed marriage as a very blessed relationship that gave marital partners an opportunity to not only love, but also to forgive.

1690-1870

From the 1690s to the 1870s, "wife sale" was common in rural and small-town England. To divorce his wife, a husband could present her with a rope around her neck in a public sale to another man.

1750

By 1750, all southern colonies, plus Massachusetts and Pennsylvania outlawed interracial marriages.

1753

The British Parliament in 1753 said marriages were only valid in law if they were performed by a priest of the Church of England—unless the participants in the marriage were Jews or Quakers, both of whom were exempt from that provision. That law did not apply to Britain's overseas colonies at that time, so the practice continued in the future United States and Canada.

1759

George Washington married without a marriage license.

1800

In the Western world the idea of marrying for love emerged.

????-1850

Under English common law, and in all American colonies and states until the middle of the 19th century, married women had no legal standing. They could not own property, sign contracts, or legally control any wages they might earn.

1800-1899

Throughout most of the 19th century, the minimum age of consent for sexual intercourse in most American states was 10 years. In Delaware it was only 7 years.

1848

In 1848, New York became the first state to pass a Married Woman's Property Act, guaranteeing the right of married women to own property.

????-1930

As late as 1930, twelve states allowed boys as young as 14 and girls as young as 12 to marry (with parental consent).

????-1940

As late as 1940, married women were not allowed to make a legal contract in twelve states.

1967

In 1967, the U.S. Supreme Court struck down state anti-miscegenation laws in *Loving v. Virginia*. As a result of the decision, Virginia and fifteen other states had their anti-miscegenation laws declared unconstitutional.

What's Legally Valid and What's Not?

The United States Supreme Court in *Meister v. Moore*, 96 U.S. 76 (1877) said, "As before remarked, the statutes are held merely directory; because marriage is a thing of common right..." The statutes to which the Court was referring purported to render invalid any marriages not entered into under the term of written [statutory] state law.

Directory - A provision in a statute, rule of procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. Black's Law Dictionary, 6th Ed.

While the various state courts have prattled on for almost 200 years about what the laws of their states do and do not allow concerning marriage, the US Supreme Court cut straight to the heart of the issue in declaring that statutes controlling marriage can only be directory because marriage is a common right, which is not subject to interference or regulation by government. Or phrased another way, the God-given right to marry existed prior to the creation of the states or the national government, and therefore it is beyond their purview to alter, modify, abolish, or interfere with, such a right.

"Recognized" versus "Unlawful"

A lot of Americans hold the incorrect perception that common law marriage is unlawful. Nothing could be further from the truth. There is no state law anywhere that claims to make common law marriage "unlawful". Such a law could not withstand the scrutiny of the US Supreme Court because the exercise of a fundamental right is always lawful!

It is true that in many states common law marriage is not "recognized". Because common law marriage is lawful, "not recognized" means that in the eyes of the State "the marriage is not known, understood, or perceived to exist".

A "statutory marriage" is registered with the State as a result of the man and woman applying for a State marriage license and thus entering into a three-party contract with the State. The State keeps records of all contracts to which it is a party and therefore such a marriage is "known to exist" to State authorities. To state the point most clearly - "not recognized" does not mean, "invalid". No state can arbitrarily declare common law marriage invalid by legislation, and none have done so!

Validity of Marriage

What constitutes a "valid" marriage at common law?

Unless there is a controversy over the validity of a marriage, a marriage thought proper by the consenting parties is a valid marriage.

The single most important element under common law is the mutual consent of the couple presently to be husband and wife. All the rest is considered evidence of this consent or exchange of promises. The only time requirement necessary was time enough reasonably to establish these circumstances.

In summary, validity is often determined based a composite picture drawn from the totality of the circumstances. Here are basic elements:

Both parties sign a marriage contract and have it notarized.

Have a ceremony.

Have three witnesses sign a marriage certificate.

Memorialize the ceremony in photographs or on video.

Cohabitate after the contract has been signed or the ceremony performed.

Let friends, co-workers, and people in the community know you and your spouse are married.

By applying each of these elements, there is no court in America that can declare your common law marriage invalid.

CEREMONY

Marilyn Roe
Robert Roe

Minister: "Who gives this woman to be married to this man?"

Minister: "If any person or persons here present know of any lawful reason why this man and this woman should not be joined together in marriage, let them now speak, or else forever hold their peace."

Minister states, "Dearly beloved, we are gathered here today to join this man and this woman in holy matrimony."

Minister asks the man, "Robert Roe, do you take this woman to be your wife, to live together in holy matrimony, to love, honor, comfort her and keep her in sickness and in health, and forsaking all others?"

(Groom answers, "I do.")

Minister asks the Bride, "Marilyn Roe, do you take this man to be your husband, to live together in holy matrimony, to love, honor, comfort him and keep him in sickness and in health, and forsaking all others?"

(Bride answers, "I do.")

Minister states, "Repeat after me."

To the Groom: "I, Robert Roe, take you, Marilyn, to be my wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish."

To the Bride: "I, Marilyn Roe, take you, Robert Roe, to be my husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish."

Minister to Groom: "Place the ring on Marilyn's finger and repeat after me", "I give you this ring as a token and pledge of our constant faith and abiding love."

Minister to Bride: "Place the ring on Robert's finger and repeat after me", "I give you this ring as a token and pledge of our constant faith and abiding love."

Minister: "Please join hands."

"By the authority vested in me in accordance with the common laws in California, I now pronounce you husband and wife. The LORD God said, [It is] not good that the man should be alone. What therefore God hath joined together, let not man put asunder. You may now kiss the bride."