

Bigamy and Polygamy: The More the Marry-er?

By Amy A. Edwards

With the [recent buzz](#) about the federal [court opinion](#) in Utah striking part of the state's polygamy law as unconstitutional after the five adults on the cast of the reality show *Sister Wives* filed suit, I decided to take a closer look at both bigamy and polygamy.

What is the Difference Between Polygamy and Bigamy?

Polygamy

Polygamy, most recognizable in this country as a centerpiece of religious beliefs associated with the Church of Jesus Christ of Latter-day Saints or Mormon Church, polygamy is the act of one husband marrying multiple wives. Polygamy is multiple marriages, with one man intending to marry several women, and those women each intending to marry him. Polygamists often have private "non-legal" ceremonies recognized among themselves, friends and family but not the government. The first wife is the only wife recognized by the law as a spouse, at least for now. For the future? All bets are off. The recent litigation in Utah, and the [US Supreme Court ruling](#) on the *Defense of Marriage Act*, both reflect changes in social attitudes over the last couple of decades. Should the federal Utah case be appealed, or if someone else has a case of this nature that reaches the U.S. Supreme Court, it could impact or even overturn the 1879 U.S. Supreme Court case [Reynolds v. United States](#), 98 U.S. 145 (1879). Also a case from Utah, *Reynolds* was the first polygamy case addressed by that court, upholding the government's right to outlaw it. As a footnote, polyandry is the practice of a woman having multiple husbands, but it apparently never caught on.

Bigamy

Unlike the multiple wives of one man in polygamist relationships, a bigamist has only two "spouses" be they husbands or wives. Usually not associated with any exercise of religion, bigamy has always been a crime in the United States. Rather than having private non-legal ceremonies, it is quite the opposite for a bigamist. The very definition of bigamy centers on a person actually going through a [legal process](#), such as getting a marriage license, seeking the services of a person vested with the authority to marry, and exchanging vows to become a lawfully wedded spouse. Bigamists who intentionally attempt to marry a second spouse while still married often conceal the first marriage from the new "spouse."

North Carolina Law - Bigamy

While I am unaware of any direct references to polygamy in our criminal or civil statutes, bigamy is a felony in our state. [N.C. Gen. Stat. §14-183](#) says this: If any person, being married, shall marry any other person during the life of the former husband or wife, every such offender . . . shall be punished as a Class I felon. An interesting twist to our law is that anyone "counseling, aiding or abetting such offender" is also a felon if convicted pursuant to this statute.

As it relates to [spousal privilege](#), a husband or wife of a defendant cannot be compelled to testify against his or her spouse with few exceptions. One of the exceptions is a criminal prosecution of a bigamy case. Unlike every other ground for an annulment, bigamy is the only "marriage" that is declared to be utterly void, even if the couple lived together and had children, and only one survives. In other words, an annulment case can be litigated and the marriage declared void *after* one of the spouses is dead. See footnote 1

As it relates to bigamy, state law presumes the second marriage is valid unless a person can meet that burden of proof to show otherwise. This means the court assumes there was a valid divorce from the first husband or wife unless the evidence proves otherwise. FN 2

If there is a property division case (*i.e.*, [equitable distribution](#)), an equal division of assets and debts is mandatory unless there is good cause to rule otherwise. In 2010, the N.C. Court of Appeals upheld an unequal division of the marital estate because the husband wasted assets. The reason he did so was because he "married" another wife overseas and had a secret family with her, diverting marital funds to the support of that family. FN 3

Bigamy: Why Do People Do It and How Do You Fix It?

Usually, bigamists marry a second person for one of two reasons, money or mistake. There are many financial [benefits](#) to marriage, including tax and military benefits, pension benefits and those associated with other survivor rights. On the flip side of that coin, several alimony cases have reached our appellate courts because one of the parties realizes there is a flaw in the earlier divorce, and decides to take advantage of it by trying to wiggle out of having to pay any alimony. FN 4

I have encountered bigamy twice during my career. Both times, the client mistakenly thought the divorce from the first person had been properly completed. In both instances, my client had to file a lawsuit for a decree of [annulment](#). A divorce terminates a valid marriage, while an annulment recognizes on paper that a relationship constituted a void marriage from the very beginning, regardless of how long the relationship lasted. In the eyes of the law, the people were never married at all. However, for the sake of the children, our law permits the offspring of a void marriage to be recognized as [legitimate](#) children. FN 5

Our law clearly sets out the grounds for an annulment, but none of those grounds offer relief based on multiple spouses. As opposed to bigamist marriages, which are included as a ground for an annulment, do polygamist "spouses" qualify for an annulment or a [divorce](#)? This question puzzles lawyers, especially in light of the Utah court ruling in favor of the cast members of *Sister Wives*.

For example, in states such as ours that do not permit same sex marriage, how does NC divorce people who weren't married in the first place? If they move to another state that allows same sex marriage, or return to the state that married them in the first place, are they still married even if they could obtain an annulment here? Will he or she commit bigamy there if there is another marriage? Currently, the law is in flux and there is no clear answer to the issue of one state giving full faith and credit to decrees of divorce (or the legal status of marriage) under these circumstances.

For an in depth and fascinating treatment of these matters, see *Distinctions of Form or Substance: Monogamy, Polygamy and Same-sex Marriage*, North Carolina Law Review, 75 N.C.L. Review 1501 (1997), by Maura I. Strassberg.

FN1: [NC Gen. Stat. §51-3](#)

FN 2: [In re Estate of Anderson](#), 148 N.C. App. 501, 559 S.E.2d 222 (2002).

FN 3: [Duruanyim v. Duruanyim](#), 204 N.C. App. 210, 694 S.E.2d 522 (2010).

FN 4: *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2 d 606 (1980), citing *McIntyre v. McIntyre*, 211 N.C. 698 (1937).

FN 5: [N.C. Gen. Stat. §50-11.1](#)

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