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Unorthodox Wedding: A New York Judge Says No License, No Marriage

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Devorah went to court to prove she was married to Steven—so she could divorce him. Without a marriage, there could be no divorce. And without divorce, there could be no forced sharing of property acquired during the marriage or spousal support. But standing in Devorah's way was the unorthodox way in which she and Steven, both orthodox Jews, conducted their relationship.

The legal question for the court in ***Devorah H. v. Steven S (http://law.justia.com/cases/new-york/other-courts/2015/2015-ny-slip-op-25228.html)*** . was this: Is the couple legally married despite their failure to obtain a marriage license?

Why Marriage Matters

It might seem ironic for someone to gather evidence to prove the existence of a marriage for the sole purpose of asking a court to dissolve it. But, in fact, this is an important threshold step in some divorces and the key to enforcing certain rights that come only with the status of marriage.

When a couple marries, they opt in to a system (whether they know it or not) that imposes rights and obligations vis-à-vis one another, many of which relate to economic

matters. Depending on the state, those rights may operate during marriage or only upon divorce. In New York, a so-called separate property state, spouses have no claim to each other's earnings until the first spouse dies or the couple's marriage is legally dissolved. Upon divorce, the court is empowered to equitably distribute the property earned by either party or bought with earnings. A divorcing spouse may also be entitled to alimony payments after divorce, depending on a variety of factors including need. These forced economic entanglements arise from the status of marriage and apply unless a couple has opted out of the system through a valid pre- or post-nuptial agreement.

When a couple cohabits without marrying, however, they are treated quite differently. During the period of cohabitation, they have no legally binding obligations to one another—no duty of support, no duty of care, and so on. They can choose to intermingle their lives—and often do—but neither party acquires any rights to the earnings of the other solely as a function of their relationship. Thus, when the cohabitation ceases, there is no automatic right to share property or ask for post-break-up support. It is possible for couples to create property-sharing or support rights by express contract—so-called *Marvin* rights—but in the absence of such an agreement, the parties can just go their separate ways, taking with them only what each brought to the relationship or acquired during their relationship with separate money or earnings.

For Devorah, proving marriage was the prerequisite for marriage-based entitlements—like the right to share in what Steve earned during the course of their 10-year relationship (during which time he was a practicing lawyer). Did she and Steven contract a valid marriage?

New York Marriage Law

Most couples know whether they are married or not—or at least they think they do. A surprising, even shocking, number of New York couples have their marriages solemnized by Internet-ordained ministers, despite several court rulings holding that such marriages are not valid under New York law, discussed **here (https://verdict.justia.com/2011/11/01/can-universal-life-church-ministers-officiate-at-weddings-in-some-states-the-answer-is-no)** , **here (https://verdict.justia.com/2011/11/21/can-laypersons-ordained-online-as-universal-life-church-ministers-or-the-like-officiate-at-weddings)** , and **here (https://verdict.justia.com/2013/05/14/a-difference-of-opinion)** . Aside from Internet-minister problems, most people marry in compliance with the law.

New York abolished common-law marriage, a marriage created by agreement rather than with formality, in the 1930s. Marrying couples must observe certain formalities. They must present themselves in person to apply for a marriage license, wait 24 hours before

proceeding to marry, and have the marriage solemnized by a recognized secular or religious officiant.

Although these requirements are seemingly straightforward, issues can arise, as with marriages presided over by Internet-ordained ministers. But what happens when a couple simply foregoes one or more of the required formalities? **Section 25 (http://law.justia.com/codes/new-york/2013/dom/article-3/25/)** of the New York Domestic Relations Code, which sets forth the required formalities, also includes this language: "Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age . . . ." As the discussion below will reveal, the meaning of this clause was crucial to the dispute between Devorah and Steven.

An Unorthodox Ceremony

Devorah and Steven met in an online chat room for orthodox Jews in 2003. She was 44 at the time, thrice married, and the mother of four minor children. He was 49, divorced, and the father of one. At the time they became romantically involved, she was in the middle of an acrimonious divorce from her third husband; Steven got involved as both her lawyer and boyfriend.

As the relationship progressed, Devorah moved in with Steven, with her four kids in tow. Unfortunately, he lived in a one-bedroom apartment in Manhattan, so it was a crowded fit. The children's father—one of Devorah's ex-husbands—filed a complaint with the Administration for Children's Services due to the living arrangements. The rabbi, whose synagogue they attended, became concerned about the situation and offered to help the couple find a more suitable apartment. He first arranged a swap for a two-bedroom apartment and then brokered another deal allowing them to upgrade again.

One might be thinking at this point in the story: Why is the rabbi brokering apartment swaps for an unmarried couple? Well he was apparently thinking the same thing. He called the parties to a meeting at his office—at which some sort of wedding ceremony took place. There is little overlap in the parties' testimony about this event beyond agreement that they were there a few minutes for a short ceremony and that the rabbi gave the parties a pair of candlesticks. The trial court didn't think much of the parties' credibility, observing that the rabbi seemed like "the only witness endeavoring to tell something approaching the whole truth."

Here are some examples of the discrepancies: the parties exchanged a ring, a bracelet, or nothing; the ceremony took place either in July or December; there was no Ketubah (Jewish wedding contract), or there was one that Steven tore up after the ceremony; the

purpose of the meeting was for the rabbi to bless the couple's cohabitation, the meeting was a full-blown wedding ceremony, or the "ceremony" consisted of the rabbi's recitation of a one-line Hebrew marriage vow; there were no witnesses or two, but different people depending on which one was recalling the event.

Why, if at all, does any of this matter? One of the required formalities under New York law is that a marriage be "solemnized" by a recognized officiant. The rabbi is clearly a valid officiant, but did this interaction qualify as solemnization? Although weddings can have a very formulaic feel to them, most of the traditions do not derive from the legal requirements. There is no law that Pachelbel's cannon must be played, nor one that flower petals be thrown. Weddings need not be large or lavish or involve the food, music, or dancing. The ceremony need only involve two elements—the giving of consent by each party ("I do") and the pronouncement by the officiant that the couple has satisfied all the requirements of marriage ("By the power vested in me by the State of New York, I now pronounce you . . . .).

The rabbi testified that this wedding bore little resemblance to the 300 others over which he has presided. "I normally like to have a hall," he testified, "with a chuppah, seven blessings, two cups of wine, and a whole band and dance for them, but this was something very, very unusual." He deviated from his usual wedding routine because he felt compelled "to act swiftly" given the couple's cohabitation with Devorah's children.

In the trial court's view, the ceremony was unusual, but not invalid. Section 12 of the Domestic Relations law provides that "no particular form of ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife." The trial court found that the law's meager requirements regarding solemnization were satisfied by the ceremony, however brief, that took place in the rabbi's office.

But the validity of the ceremony was only part of the battle for Devorah. What of the fact that the couple never procured a marriage license? There was no disagreement at trial about the lack of a license, although conflicting testimony perhaps about why one was not obtained. The rabbi testified that he "exhorted" the couple many times to get a license; he also testified that he assumed they would later get a license and repeat the ceremony afterwards.

A License to Wed

A marriage license is exactly what it sounds like—permission from the state to get married. But what purpose does it serve? In the first instance, it permits the state to

screen applicants for eligibility to marry—by inquiring beforehand whether either person already has a living spouse; whether the couple is too closely related to marry; whether both parties are of age or have parental consent; and whether both possess the requisite mental competence. The license is a blunt instrument; the state relies, for the most part, on information provided by the parties on the application for the license and perhaps a quick once-over by the clerk to ensure that the information is at least plausible. But annulment law is full of cases in which one party seeks, after the fact, to have a marriage declared void because of an impediment to valid marriage.

The license requirement also permits the state to deter hasty weddings. The act of applying for a marriage license requires an in-person visit by both parties to a government office, where the seriousness of the act of marriage might be impressed upon them. Moreover, the license is followed by a mandatory waiting period that might give the parties the opportunity to rethink the decision, or at least to let the alcohol in their bloodstreams oxidize.

After the fact, the license—which is replaced in importance by a marriage certificate proving that the marriage took place as planned—serves as a vital record. The state keeps records of births, marriages, and deaths, among other things. Documentary proof of marital status can come in handy for individuals for any number of reasons including tax filing status, employment benefits, insurance, and so on. It is thus not unreasonable for a state to require the license to facilitate not only its own recordkeeping needs, but also those of its citizens.

If the license serves all these functions, why did the New York legislature include a provision saying that, although it is required, the lack of a license will not invalidate a marriage. In addition to the sheer illogic of imposing a requirement and negating it in the very same statutory provision, it seems strange to dispense with a requirement that serves some useful purposes and imposes no serious burden on individuals. But that is what the statute seems to do.

There are several cases in which New York courts have upheld the validity of marriages despite the failure to obtain—or even attempt to obtain—a marriage license. In each of those cases, the husband claimed—as does Steven—that he did not intend to marry, despite having participated in a wedding ceremony. But in those cases, at least in this court's view, the husbands' claims were belied both by lavish and ritualistic wedding ceremonies and by the couple's conduct before and after the ceremonies. The trial court in Devorah's case thus interpreted those precedents to say this: the license requirement can be dispensed with only if the marriage was properly solemnized and contextual evidence makes clear that the parties intended to marry.

One could say a similar line was drawn in another recent case, ***Ponorovskaya v. Stecklow*** **(http://law.justia.com/cases/new-york/other-courts/2014/2014-ny-slip-op-24140.html)** , in which a trial court refused to validate "a license-less marriage supposedly solemnized in what can only be described as a 'pseudo-Jewish' wedding ceremony conducted at a Mexican beach resort by a New York dentist who became a Universal Life Church minister on the internet solely for the purpose of performing weddings for friends and relatives." That case, which is discussed in more detail **here (https://verdict.justia.com/2014/06/19/married-goal-beware-symbolic-resort-wedding-mexico)** , also involved a conflict-of-laws question because the ceremony took place outside the state of New York, but the lack of a license was a central problem.

The judge in *Ponorovskaya* criticized the provision that seems to dispense with the requirement of a license as an "anachronism" that had "outlived its usefulness." The judge in Devorah's case reached a similar conclusion, suggesting that the clause dispensing with the license requirement "serves no useful function in today's world." Judges cannot simply refuse to apply a law they deem obsolete, but they can interpret and apply the law in a manner consistent with its intent—even if this means giving it a narrower reading than a first glance at the statutory text might suggest. The judge in Devorah's case did just that. He examined the couple's conduct before, during and after the ceremony and concluded that they did not intend to marry. Their marriage was thus not valid for lack of a license per se, but for the lack of intent to marry, a requirement of all valid marriages. The couple's failure to obtain a license was further evidence of this lack of intent. After all, between them, they had entered into four apparently valid prior marriages—all with proper licenses. So they clearly knew a license was required.

The couple's conduct after the alleged wedding only reinforced the judge's conclusion that the couple did not intend to marry. Devorah referred to Steven as her "roommate" in sworn testimony in one lawsuit, and as her "boyfriend" in another. She also filed federal tax returns as "single" and "head of household," and applied for public assistance as the unmarried mother of four. In addition to potentially constituting fraud, these representations were inconsistent with her claim in the divorce cases that she and Steven were married for the last ten years. Devorah claimed that Steven forced her to make these claims and statements, but the trial judge in the divorce case did not find her allegations credible.

A Final Exhortation

The rabbi's testimony in this case was rife with exhortations. He "exhorted" Steven and Devorah to get married before living together (and certainly before living together in a second and then third apartment). He "exhorted" them to get a marriage license. He

"exhorted" them to follow up the brief in-office wedding with a more substantial one—after getting a license. His exhortations were apparently not powerful enough, as Steven and Devorah ignored them.

The trial court in this case concluded the opinion with its own exhortation, for the New York legislature:

> DRL §25, in its present form, serves no useful function in today's world. Conceivably, if the statute was amended to allow couples who justifiably believed they were legally married with a valid marriage license to protect the marriage from a claim that the license was improperly executed or otherwise defective, that would certainly serve the public interest. But as it exists now, the statute allows for the wholesale disregard of New York's licensing requirements—requirements that, as we have seen, play a vital role in insuring that marriages are legally valid. Until DRL §25 is repealed or reformed, courts will be forced to grapple with situations like this, where the parties fully understood that they did not legally marry but one side seeks to abuse the statute to attain the financial remedies only available to litigants who are married to one another.

Will the New York legislature listen any better than Steven and Devorah?

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