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Some people who think they're legally married really aren't

These days, a growing number of couples are opting out of traditional church weddings and are choosing instead to be married in less formal ceremonies, often presided over by a friend or relative rather than a priest or rabbi.

That's fine if that's what the couple wants – but the problem is that some such weddings might not be technically valid under state law. A couple could live together for years assuming they're legally married, and only find out otherwise much later when something unfortunate happens, such as a death or a divorce.

Typically, a valid marriage requires a license, witnesses, and solemnization by someone with the legal authority to do so. "Legal authority" is the problem. In many states, this means either a justice of the peace or a person who has been ordained by a recognized religion.

Many people believe that they can perform weddings if they've been ordained by the Universal Life Church, an Internet "religion" that has no particular belief system but that allows people to fill out an online form and quickly become "ordained." The ULC's website proudly touts that its "ministers" can perform weddings. But just because something appears on a

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CHILDREN AND THE LAW



Ex-wife couldn't change children's names without husband's consent

After a New Jersey couple divorced, the wife asked a court to change their two children's last name to her maiden name. (The children had been given the husband's last name at birth.)

The judge agreed, saying that since the mother was the primary residential parent, it should be presumed that she was acting in the children's best interests, and her decision should be respected.

But the father appealed, and a higher court sided with him.

The appeals court said that this result might make sense in the case of a child who was born out of wedlock. For instance, if a child were born as a result of a momentary physical relationship between a couple, or during a very brief relationship, then the parent who later assumed responsibility for the child might have a right to choose the most appropriate name.

However, where children are the product of a marriage, and were named by a "marital partnership" with the intent that their names be permanent, one parent can't simply reverse that decision without the other parent's consent, the court said.

Deceived husband sues biological father for child-rearing costs

A Connecticut woman gave birth to a daughter in 1992. Fifteen years later, her husband discovered that she had had an affair, and that he

was not the biological father of the girl he had raised as his own.

After divorcing his wife, the man sued the biological father, seeking reimbursement for the costs of raising the girl from birth to the date of the divorce.

The biological father argued that in general, lawsuits like this shouldn't be allowed because they could harm children's emotional well-being. But the Connecticut Supreme Court disagreed, and said a lawsuit should be barred only if it threatened a child's *financial* well-being as well as his or her emotional well-being.

As usual, the law varies from state to state, but this is certainly an interesting and difficult topic.

Aunt isn't entitled to visitation rights

Recently, many states have passed laws that give grandparents certain visitation rights with a child after a divorce or after the death of the child's parent.

Predictably, this has given rise to questions about whether this right should be extended to other close relatives, such as aunts, uncles and cousins.

The issue came up recently in Minnesota, when a woman asked for visitation rights with her niece – the daughter of her recently deceased identical twin sister.

The woman argued that since Minnesota has a law that gives visitation rights to grandparents, it only made sense to include other family members as well.

But the Minnesota Supreme Court said that the law was to benefit grandparents and shouldn't be extended to other relatives – except perhaps in unusual cases where another relative had previously been acting in place of the child's parents.



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Some people who think they're legally married really aren't

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website doesn't mean it's necessarily true.

For instance, the Virginia Supreme Court ruled that someone who was "ordained" by the ULC is not a real minister and doesn't have any legal authority to perform a valid wedding. Courts in a number of other states have also rejected "marriages" solemnized by someone with an online or mail-order ordination.

What could happen to a person if they're not legally married?

One problem is that if they ever decide to get divorced, they might find that they're not protected by the divorce laws. They might have no more rights than someone who merely cohabited with another person for many years.

Another problem is that if they signed a prenuptial agreement, it might be worthless if it wasn't followed up with a legally binding "nuptial." Prenups are signed in contemplation of marriage, and they're usually meaningless if there isn't a marriage. In one case, an appeals court in New York ruled that a prenuptial agreement was legally unenforceable because the subsequent "nuptials" were performed by a ULC minister.

People with suspect weddings could also find themselves at a loss if a spouse dies, especially if he or she dies without a will. For instance, in Mississippi, the spouse of a deceased person is automatically entitled to a certain percentage of his or her estate. In one case, a deceased man's family went to court to deprive his wife of her share of the estate, claiming that she wasn't really his "wife" because they had been married by a ULC minister.

The Mississippi Supreme Court ultimately decided that the marriage was legal...but the wife had to battle all the way to the state's highest court to get her share of the estate.

People who aren't technically married could face all sorts of other problems. They might not be able to share in a deceased spouse's pension or 401(k). They might not have the right to own real estate as "tenants by the entirety" and thus protect themselves from creditors. They might not be able to sue and recover damages if their spouse is injured or killed. And they could face dire problems with

income, gift and estate taxes.

One of the most interesting cases involved a man who was actually saved by having a "defective" marriage. James Lynch was charged with bigamy, but managed to escape punishment by claiming that his first marriage wasn't "real" since it was performed by a ULC minister. The North Carolina Supreme Court agreed that the first marriage was invalid, and threw out the charges.

Afterward, the state legislature stepped in and passed a law declaring that ULC weddings that had been performed before the law was passed would be considered valid... although weddings performed by ULC ministers *after* the law was passed were not protected by the law.

In Pennsylvania, judges have issued conflicting decisions on whether a ULC ordination is good enough.

In Utah, the state legislature passed a law not only invalidating Internet ordinations, but also making it a crime (punishable by up to three years in jail!) for someone to perform a wedding if he or she had only an online ordination. A federal court later struck down this law as unconstitutional, saying it was irrational because it applied to online ordinations but not those that were obtained by fax or over the phone.



People could live together for years assuming they're legally married, only to find out otherwise when something unfortunate happens, such as a death or a divorce.

Father's gift to 'y'all' could be divided at divorce



A father in Virginia gave his married daughter a check for \$15,000, and told her it was a gift for "y'all." The daughter and her husband used the money to fix up their home, which they jointly owned.

Later, the couple divorced. The husband argued that the money was a joint gift, and thus he was entitled to a share of it in the divorce. The wife argued that it was a gift to her and that she didn't have to share it.

So the case turned on the legal definition of "y'all." Did that refer to just the daughter, or the couple?

A judge ruled that the gift was for the couple,

and thus it could be split at divorce. This was partly because the father said he intended it for "y'all," but also because the money was used to improve joint property – so regardless of how the gift was intended, it was converted into a joint asset.

**Be careful
with family gifts
if the recipient
is contemplating
a split.**

The idea of a judge analyzing the legal significance of "y'all" might be amusing, but the larger point is very serious: If a person is contemplating divorce and also might be receiving a gift or an inheritance, it's very important to speak with a family law attorney about how to make sure the assets remain separate.

There might not be a foolproof way to keep a gift or inheritance from becoming divisible at divorce, but you can improve your odds dramatically if you're careful about how the gift is transferred, and if you make sure the assets aren't put into a joint account or used for a joint purchase.

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