

## PROFESSOR LEX

BY HARVEY I. HAUER AND MARK A. SNOVER  
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Dear Professor Lex,

**I recently commenced a divorce action. The parties have been married for five years. My client advised me that she was previously married and divorced. Her current husband claims that he knows that my client was not previously divorced. In questioning my client about this assertion, she advised me that her first husband, whom she has not seen for many years, told her years ago that he had obtained a divorce. Through family members, communication was made with the first husband, who is also remarried. He admitted telling my client that he obtained a divorce, although he had not. He claimed he was angered because she no longer wished to be married to him. I am not sure how to proceed as I do not know if her current marriage is valid. Do you have any suggestions?**

Dear Practitioner,

You will want to review *Quinn v. Quinn*, 4 Mich App 536; 145 NW2d 252 (1966). Wherein the facts, in part, are as follows:

Plaintiff, Deloris Quinn, instituted action by a complaint for divorce against William H. Quinn upon the grounds of cruelty. William H. Quinn filed a counterclaim for annulment, alleging a pre-existing valid marriage between Deloris Quinn and one Floyd Thomas. A judgment dismissing the complaint for divorce and granting an annulment was entered by the circuit court for the reason that no valid marriage existed between Deloris Quinn and William H. Quinn, since Deloris Quinn was then still married to Floyd Thomas and ineligible to enter into a contract of marriage with William H. Quinn.

Deloris Quinn entered into a ceremonial marriage with William H. Quinn on June 22, 1958, in the Wayne County Probate Court. *Id.* at 537.

The wife appealed. The court of appeals held:

The jurisprudence of our state has long upheld the

existence of a strong presumption in favor of the validity of a second ceremonial marriage where it is attacked on the ground that one of the parties was married to another. 'As early in our jurisprudence as the case of *Dixon v. People*, 18 Mich. 84, we have held that, where the validity of a marriage is attacked on the ground that one of the parties was married to another, a very strong presumption exists in favor of the validity of the second marriage, particularly where the second marriage was a ceremonial marriage and children were born during it. This case involves that presumption of validity of a second ceremonial marriage.' *In re Adams Estate* (1961), 362 Mich. 624, 625, 107 N.W.2d 764, 765.

Defendant, William H. Quinn, seek[s] an annulment of a marriage which is presumed to be valid. He must therefore establish with clear and positive proof that it was not valid. *In re Adams' Estate*, supra.

It is not denied that Deloris Quinn, formerly Deloris Warren, entered into a ceremonial marriage with a Floyd Thomas on March 27, 1952, in DeSoto County, Mississippi. A marriage certificate was offered into evidence to substantiate this fact.

It is claimed by Deloris Quinn that the marriage with Floyd Thomas was not valid and, further, that at the time of her marriage to William H. Quinn, she believed Floyd Thomas to be dead. To the best of her knowledge, Floyd Thomas had never attempted to procure a divorce from her, nor had she ever received or been served with any divorce papers. She did, however, institute annulment proceedings in Alabama in 1962 and was granted an annulment decree which was admitted to be void because of jurisdictional defects.

William H. Quinn testified that he was introduced to Floyd Thomas at the home of plaintiff's mother in Florence, Alabama, at the time of the mother's funeral. Deloris Quinn denies this fact.

Defendant also introduced an undated letter from plaintiff's grandmother who lived in Florence, Alabama, which referred to Floyd Thomas as though he were still alive.

This is the extent of William H. Quinn's proof offered to rebut the presumption of the validity of his marriage to Deloris Quinn.

The basis for the existence of the strong presumption in favor of a marriage was clearly stated in *Doertch v. Folwell Engineering Co.*, 252 Mich 76, 78; 233 NW 211, 212 (1930):

The law presumes the validity of a ceremonial marriage. It is said this presumption is one of the strongest known to the law. It is founded, not only on a presumption of innocence of the crime of bigamy on the part of the contracting parties and on the regularity of the acts of licensing and officiating officers, but has a basis in the public policy to foster respectability and to protect offspring from the taint of illegitimacy.

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In the case at bar, there is a 6-year span between the marriage in 1952 of Deloris Quinn to Floyd Thomas and the marriage in 1958 of Deloris Quinn to William H. Quinn. The plaintiff testified she had seen Thomas once after the ceremony which took place in 1952 but prior to the present marriage. Defendant claims to have seen him at the funeral of Deloris Quinn's mother. This is denied by plaintiff. Although the record raises the issue of Floyd Thomas being alive at the time plaintiff and defendant were married, it does not contain the preponderance of evidence necessary to overcome the dominant presumption.

We hold, therefore, that the presumption in favor of the validity of the second ceremonial marriage was dominant. *Id.* at 540.

You should also review *In the Matter of the Estate of Tommie Williams*, 164 Mich App 601; 417 NW2d 556 (1987), wherein the decedent married four women without divorcing any of them. The second of the four wives, Respondent, petitioned the probate court to begin intestate proceedings and requested to be appointed as the personal representative of the decedent as she asserted that she was the decedent's wife. However, the fourth wife, Petitioner, upon notice of the initiated proceedings, petitioned the probate court and requested the removal of the second wife as personal representative and asserted that she was actually the decedent's wife. As to the first wife, she did not participate in the proceedings, and the

third wife passed prior to the decedent's death. Therefore, this dispute was only between the second and fourth wife. The trial court, due to this dispute, entered an opinion and held:

The decedent married both Petitioner [Betty] and Respondent [Rose] without first obtaining a divorce from his prior wives. This court further notes that Respondent and decedent had a child, Bertina, during their marriage. Also, this court notes that Respondent and decedent separated almost eleven (11) [sic; seventeen] years prior to decedent's marriage to Petitioner and that Respondent remarried during the time of their separation. Further, this court notes that Petitioner and decedent entered into a ceremonial marriage without her knowledge of decedent's prior wives. Additionally, this court notes that Petitioner contributed to the purchase of the rental property which is an asset of decedent's estate and has been making the mortgage payments since decedent's death. This court concludes that Petitioner is decedent's lawful spouse inasmuch as this court finds that her marriage to decedent was solemnized in good faith, without her knowledge of decedent's other marriages, they lived together as husband and wife since they entered their marriage in 1974, and they both contributed to the purchase of the rental property which is now an estate asset. *Mogk v Stroecker*, 243 Mich 668[;] 220 N.W. 730 (1928). This court recognizes the law favoring a subsequent marriage in the case at bar. To permit Respondent to come forward now and claim a spousal share would cause an injustice to Petitioner. In this case, Respondent herself remarried while decedent was still living. Secondly, Respondent waited over twenty (20) years until decedent's death, to come forward and assert her argument.

"This court holds that Petitioner is the lawful spouse of decedent, is entitled to act as personal representative of decedent's estate, and is entitled to her statutory share of decedent's intestate estate.... *Id.* at 606-607.

Due to the trial court's ruling, the decedent's second wife appealed. The court of appeals held that:

In Michigan, where the validity of a marriage is attacked on the ground that one of the parties was married to another, a very strong presumption exists in favor of the validity of the second marriage.

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We conclude that Rose is estopped from asserting her legal status. We base our conclusion on several grounds. Rose deserted decedent in 1957. Rose herself remarried without obtaining a divorce and without

making reasonable efforts to ascertain whether decedent had divorced her. Equally important is the fact that Rose learned that no divorce existed in 1972 yet remained silent when decedent married Betty in 1974. It also appears Rose had the opportunity to bring the defect to Betty's attention so that the defect could be cured since Rose acknowledges in her appellate brief that she maintained "consistent social contact throughout the term of the deceased's life." After ten years of purported matrimony ended with decedent's death only then did Rose step forward to announce that she was his lawful spouse. The apparent object of Rose's claim is the bounty produced by decedent's and Betty's ten years of labor. *Id.* at 609.

Hopefully the above is of assistance to you.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

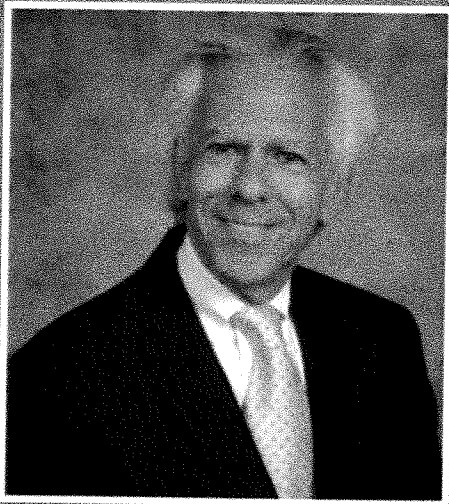
Please send questions for Professor Lex to [Hhauer@hauer-snover.com](mailto:Hhauer@hauer-snover.com). Include "Professor Lex" in the e-mails subject line.

## About the Authors

**Harvey I. Hauer**, Hauer & Snover, PC, is a Fellow of the American Academy of Matrimonial Lawyers and the former president of the Michigan Chapter. He has also served as chairperson of the State Bar of Michigan Family Law Section, the Michigan Supreme Court Domestic Relations Court Rule Committee and the Oakland County Bar Association Family Law Committee. He has been named by his peers to Best Lawyers in America, Super Lawyers and Leading Lawyers. He is a co-author of Michigan Family Law.

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