

論重婚之法律上效果

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摘要

婚姻與家庭為社會形成與發展之基礎，受憲法制度性保障，參照司法院大法官釋字第 362 號、第 552 號解釋。惟查立法機關就婚姻關係之有效成立，訂定登記、一夫一妻等要件，目的在強化婚姻之公示效果，並維持倫理關係、社會秩序以及增進公共利益，有其憲法上之正當性¹。按刑法第 237 條之重婚罪，客觀上除須有配偶而重為婚姻或同時與二人以上結婚外，主觀上仍須具備重婚之故意始足成立。惟「重婚之故意」於實務上認定不易，且詐術締婚之「無效或得撤銷之婚姻」受有限制，對於前婚配偶而言，不無侵害憲法保障「一夫一妻」制的婚姻權益之虞。又如前婚姻業已經法院判決而消滅，第三人本於善意且無過失，倘該判決嗣後又經變更，致後婚成為重婚，如認後婚因重婚而無效，則因信任前婚判決效力而相婚之後婚配偶，其保護未免不周。本文旨在深入檢討台灣重婚爭議案件所牽涉之民、刑事效果，並佐以美國相關裁判書說明出，最末提出想法與建議，冀供國人對於婚姻制度的意義有更進一步的思考。

A Discussion on Legal Effects of Bigamy

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Abstract

Marriage and family as the foundation of the social formation and development, subject to constitutional safeguards (see Taiwan Justice Interpretation No. 362 and 552.) The legislature established a valid marital system whose elements including registration, monogamous, aim to strengthen the publicity effect of marriage and to maintain ethical relationships, social order, and to promote the public interest, with its constitutional legitimacy. According to Taiwan Criminal Law §237 of bigamy, objectively, it is the act of entering into a second marriage willfully and knowingly during the existence of the valid bond of a first marriage. However, bigamy on purpose is a uneasily-determined subjective element and entering a marriage with guile also subjects to the definition of void or voidable marriage which infringe the constitutional protection for the system of monogamous marriage for the first marital spouse. And if the prior marriage has been ruled annulment by the Court, and the spouse in the second marriage was in good faith without negligence, but the judgment subsequently altered by making the second marriage a bigamy, as a recognized invalid marriage, who trusted the effect of the court's ruling before entering into the marriage, to whom the protection is inadequate. This paper aims to provide an in-depth review of bigamy cases in Taiwan involving civil and criminal effects, supplemented by a U.S. judgement on the similar-based fact to illustrate the individual marital free rights for our people to have further thoughts on the meaning of the institution of marriage.

¹ 司法院大法官釋字第 647 號解釋。