

CHAPTER 6

Offenses Against the Family

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I. BIGAMY

A. LAW

§6:10 GOVERNING STATUTES

P.C. Sec. 25.01. Bigamy

(a) *An individual commits an offense if:*

(1) *he is legally married and he:*

(A) *purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would but for the actor's prior marriage, constitute a marriage; or (B) live with a person other than his spouse in this state under the appearance of being married;*

or

(2) *he knows that a married person other than his spouse is married and he:*

(A) *purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or*

(B) *lives with that person in this state under the appearance of being married.*

(b) *For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.*

(c) *It is a defense to prosecution under Subsection (a)(1) that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.*

(d) *For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.*

(e) *An offense under this section is a Class A misdemeanor.*

P.C. Sec. 25.02. Prohibited Sexual Conduct

(a) *An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:*

(1) *his ancestor or descendant by blood or adoption;*

(2) *his stepchild or stepparent, while the marriage creating that relationship exists;*

(3) *his parent's brother or sister of the whole or half blood;*

(4) *his brother or sister of the whole or half blood or by adoption; or*

(5) *the children of his brother or sister of the whole or half blood or by adoption.*

(b) *For purposes of this section:*

(1) *"Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.*

(2) *"Sexual intercourse" means any penetration of the female sex organ by the male sex organ.*

(3) *An offense under this section is a felony of the third degree.*

§6:20 INVESTIGATION

The jury should not be instructed that the defendant should have made an investigation into the facts of whether he was previously divorced. This places a greater burden on defendant than required by law. Adams v. State, Tex Cr 7 SW(2) 528.

§6:30 IDENTIFICATION

Defendant must be identified as the person in both marriages. Goad v. State, Tex Cr 102 SW 121.

§6:40 WANT OF PROPER CARE

The trial court should not give the jury any rule by which to determine “want of proper care” or the exercise thereof, in bigamy. Hilton v. State, Tex Cr 191 SW(2) 875. The standard is contained in the definition of “reasonable belief.”

§6:50 SPOUSAL IMMUNITY

In accordance with P. C. Sec 25.01(d) the defendant’s lawful wife or husband may testify for or against the defendant as to the original marriage. NOTE: The statute does not appear to **compel** the spouse’s testimony.

§6:51 DEFENSES OR LACK THEREOF

Consent, illegitimacy and illegality of the marriage were not defenses under the old penal code. Schoenfeldt v. State, Tex Cr 18 SW 640, Wadkins v. State, Tex Cr 124 SW 959 and Simon v. State, 20 SW 716.

§6:52 CORROBORATION OF ACCOMPLICE

A female consenting to incestuous intercourse is an accomplice whose testimony must be corroborated. Bradshaw v. State, Tex Cr 198 SW 942. But if the act is the result of force, threats, fraud, or undue influence she is not an accomplice. Wilson v. State, Tex Cr 184 SW 141.

§6:53 BLOOD OR ADOPTION INSTRUCTION

Failure to object to a charge omitting the words “by blood or adoption” was not egregious error where the relationship was undisputed. Duby v. State, Texark App 735 SW(2) 555.

B. FORM**§6:60 BIGAMY****P. C. Sec. 25.01(a)(1)**

Class A Misdemeanor

(bigamy)

LADIES AND GENTLEMEN OF THE JURY:

The defendant, AB, stands charged by indictment with the offense of bigamy, alleged to have been committed in _____ County, Texas on or about _____ [date]. The defendant has pleaded not guilty.