COMMON LAW MARRIAGE IN "MEASURE FOR MEASURE"

Lawrence N Weiss, J.D. (Columbia 1966)
“Common-law marriage” is a misnomer, at least as applied to marriages in early modern England. The law governing the formation and elements of marriage in Tudor and Stuart England was a product of ecclesiastical law enforced in the church courts, not the common law created by the royal courts or statute law enacted by Parliament with the consent of the monarch. The term was not even in vogue until more recent times, when it means generally marriages created by the consent of the parties and sanctioned by law but undertaken by informal, non-ceremonial, means. It is, nonetheless, convenient if imprecise shorthand for all irregular but lawful marriages, as they are all bottomed on the agreement of the parties.

Non-ceremonial (“common-law”) marriage is still valid in some of the United States, where it has well understood elements. Typically, it is a marriage created by the voluntary agreement of parties who have the competence to marry each other, i.e., they must both be above the age of consent, mentally capable and not deceived as to the facts, and not related to each other to a prohibited degree, and neither may already have a living spouse. At least until the time of this writing, most jurisdictions still required the parties to be of different sexes.

1 I am grateful to Dr. Julia B. Griffin of the Georgia Southern University literature department for her kind assistance in reviewing this paper and making helpful suggestions. I am also grateful to Sir Allan Green, KCB QC for his help with U.K. Law.


3 Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Rhode Island, South Carolina, Texas, Utah and the District of Columbia recognize new common-law marriages, and other states recognize them if contracted prior to their statutory abolition. New Hampshire continues to recognize them for inheritance purposes. Lind 508, et seq.; http://www.nolo.com/legal-encyclopedia/faqEditorial-29086.html#updates; http://en.wikipedia.org/wiki/Common-law_marriage#United_States. Some Canadian provinces give effect to various forms of non-ceremonial marriages or civil union; but, as this is by statute, it is difficult to call them “common-law” marriages. Ibid.

The essential element, now and in early modern England, is the parties’ agreement to be married, which has been confused in modern formulations with the facts which may be used to evidence the agreement. Typically, non-ceremonial marriages are not memorialized in writing (although that is certainly possible), so the conduct of the parties is essential to establishing the relationship when it is in question. Two facts are crucial to the finding: (a) the parties’ cohabitation with each other, and (b) their holding themselves out to others as husband and wife.  

The twenty-fourth session of the Council of Trent (November 11, 1563) adopted a Decree on the Reformation of Marriages, chapter one of which affirmed the continued validity of prior marriages entered into by traditional non-ceremonial means but invalidated all future marriages in Catholic countries which were not performed by a priest in a public ceremony. In England, however, it appears that such marriages were looked on with disfavour but were perfectly valid, even taking precedence over a subsequent ceremonial marriage solemnized in church. The essence of such a marriage was the expression by both parties of their present intention to be husband and wife – per verba de praesenti – sometimes called a “handfasting.” The presence of a witness to the exchange was, of course, desirable, but not necessary. As Loreen Giese puts it, “Solemnization was more a matter of publicity than a requirement for a valid marriage” (Giese 115). The possibility of a marriage in accordance with these principles came to an

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5 Lind §§ 8.5, 8.6; 55 C.J.S. op. cit. supra at § 26. The notion celebrated in song and story that a man might be trapped into marrying a punk by spending a night with her in a hotel registered as “Mr. and Mrs.” is quaint but, fortunately, fanciful. For one thing, the crucial element of consent to be married is missing; for another, the cohabitation and holding out used to find the fact of agreement needs to be habitual or even “continuous” (ibid.; see, also, Lind 521 et seq.).

6 Lind 4; [http://history.hanover.edu/texts/trent/ct24.html](http://history.hanover.edu/texts/trent/ct24.html); [http://www.newadvent.org/cathen/15030c.htm](http://www.newadvent.org/cathen/15030c.htm) (Catholic Encyclopaedia online).

7 E.g., Giese 2, 113-16, 137; Ingram 132; J.W. Bennett, MEASURE FOR MEASURE AS ROYAL ENTERTAINMENT 18n.8 (Columbia Univ. P. 1966) . However, this was not free from doubt, as witnessed by the House of Lords’ variety of inconclusive opinions in The Queen v. Millis, 10 Clark & Finnelly 534, 8 Eng. Rep. (HL) 844 (H.L. 1843), which was twice postponed for further consideration and consumes 373 pages in Clark & Finnelly.

8 Ingram 190.

9 Giese, supra; Ingram 189-90.

10 Id. 190.
end in England with the enactment of Lord Hardwick’s Act, 137 years after Shakespeare
died (The Marriage Act [1753], 26 Geo II c. 33).[^11]

As Rev. H.N. Hudson put it in his prodigious (and in many ways *avant l’idée*)
1872 treatise on all of Shakespeare,

[I]t is well known that in ancient times the ceremony of betrothment conferred the
marriage tie, though not the nuptials, so that the union of the parties was thence-
forward firm in the eye if the law itself.[^12]

A betrothal, on the other hand, by the expression of intention to be married in the
future – *per verba de futuro* – did not create a binding marriage until it was subsequently
solemnized or otherwise lawfully consummated. Either party could in the interim dis-
avow the engagement explicitly or by inconsistent conduct, such as by getting married to
someone else. Moreover, some betrothals were conditional on the occurrence of a subse-
quent event, such as the receipt of a dowry, the non-occurrence of which nullified the en-
gagement.[^13] However, under the view discussed below, if a conditional betrothal were
followed by sexual intercourse between the parties, the condition was no longer material
and the parties were, *ipso facto*, married by virtue of the consummating act – *per verba
de futuro cum copulo*.[^14] The sex act thus seems to have substituted for the expression of
words of present intent, perhaps under the notion that couples would not do such a thing
unless they intended to be married. That is what is known as a legal fiction. In actuality,

[^11]: In Scotland, marriages *per verba de presenti* and *per verba de futuro cum copulo* were unquestionably
Rep. 693-94n (Ct. of Delegates, 1811). They remained valid there for nearly another two centuries, being
abolished in the Marriage (Scotland) Act (1939), 3&4 Geo VI c.34. Common-law marriages by “cohabita-
tion with habit and repute” remained valid in Scotland until they were abolished by Act of the Scottish Par-

Pub. Reprint 1970). See, also, *id.* at 403 (“the illicit meeting of Claudio and Juliet … taking place under
the shield of a solemn betrothment … very much lessens their fault, as marriage bonds were already upon
them”).

[^13]: Ingram 190; see also, *e.g.*, M. Garber, *SHAKESPEARE AFTER ALL* 571-72 (Anchor Books 2005).

[^14]: Ingram 190.
of course, the principle served the social utility of reducing the disconcertingly large number of bastards in the realm.

Blackstone summarized these principles as follows (1 Commentaries 427 [1765]):

Any contract made, per verba de præsenti, or in words of the present tense, and in case of cohabitation per verba de futuro also, between persons able to contract, was before the late act [Lord Hardwick’s Act] deemed a valid marriage to many purposes; and the parties might be compelled in the spiritual courts to celebrate it in facie ecclesiae.

That is not free from doubt, however, as the varying opinions in The Queen v. Millis, supra n.7, illustrate. The defendant in that case had been charged with bigamy for entering into a marriage while still married to a woman with whom he had gone through a marriage ceremony in Ireland conducted by a Presbyterian minister. The question was whether that ceremony was a valid per verba de præsenti wedding. Lord Hardwick’s Act did not apply in Ireland. Three of the six Law Lords voted to affirm a unanimous judgment of the Queen’s Bench to the effect that marriages not celebrated in the face of the Church were invalid, even if contracted by words of present intent. The other three Law Lords were of the contrary opinion, so the judgment was affirmed by an equally divided House. In dictum, however, the six Law Lords were unanimous that, contrary to the authorities cited above, words of future intent followed by cohabitation did not create a valid marriage for any purpose. Each of the Law Lords marshaled elaborate historical authority, going back well before the Tudor era, for his particular opinion. The Millis case has been criticized frequently, including in subsequent case law, and the prevailing view is that it did not correctly describe the pre-Hardwick Act law.

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15 In the same year, the U.S. Supreme Court also divided evenly on the same issue. The Court thereby affirmed a jury charge in substantially the same words as Blackstone’s formulation, including with respect to words of future intent plus cohabitation which the House of Lords’ dictum rejected. Lessee of Jewell v. Jewell, 1 How. (42 U.S.) 219 (1843).

16 See, e.g., Thomas v. Holzman, 18 D.C. 62, 66, 7 Mackey 62 (1888); Lind at 137, also citing, e.g., F. Pollack, FIRST BOOK OF JURISPRUDENCE (2D ED.) 328 (1904).
While we cannot absolutely declare that the commonly understood law summarized above and reflected by Blackstone’s Commentaries was actually the law of the land or was understood to be such in Elizabethan/Jacobean England, it seems likely that it was. John Webster offers good evidence of this when he has the Duchess of Malfi say, after seducing Antonio into kneeling to confirm his marital commitment to her (in the presence of a witness concealed behind an arras), “I have heard lawyers say, a contract in a chamber | Per verba de presenti [sic] is absolute marriage” (I.i.468-69).\(^{17}\)

*Measure for Measure* is the principal focus of this essay; but it is worth noting that Shakespeare expressed some uncertainty as to the validity of *per verba de præsenti* commitments in *Twelfth Night* (IV.iii.22 et seq.\(^ {18} \)). He there suggests a difference between a ceremonial betrothal and a ceremonial marriage. But this is confused by other passages in that play: Olivia’s reference to Sebastian as her “husband” (V.i.143-44); Sebastian’s use of both “contracted” and “betrothed” to describe the spousal (V.i.261.63); and the Priest’s apparent assurance on the strength of the commitment (V.i.156-61). (See Giese 155.)

The Church was probably responsible in part for the confusion. It encouraged ceremonial marriages by allowing the notion that non-ceremonial marriages were invalid or taking the position that they were incomplete in that, while binding, they required a clerical wedding to endorse them (see, *e.g.*, Giese 116). It offered, however, to allow parties to *per verba* marriages to compel ceremonial marriages (see, *e.g.*, Blackstone, *loc. cit. supra*).

It is reasonable to assume that Shakespeare had at least a working familiarity with the English law of marriage.\(^ {19} \) The question I examine in this paper is the extent to which

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17 R. Weis, ed., *The Duchess of Malfi* (Oxford Univ. P. 1996). The commentary note says that, while the marriage is “legally binding, … it still required subsequent solemnization in church before it could be consummated” (*id.* at 391). *Query*?

18 All citations and quotations of Shakespeare’s works are to/from the RIVERSIDE 2d Ed, G.B. Evans, general ed. (Houghton Mifflin 1997).

19 He might have presided over the handfasting ceremony for the Belott/Mountjoy marriage (J. Bate, *SOUL OF THE AGE: A BIOGRAPHY OF THE MIND OF WILLIAM SHAKESPEARE* 163 [Random House 2009]). We
the spousal law reflected by the plot in Measure for Measure sheds light on Shakespeare’s understanding of that law.

Of course, Measure for Measure does not take place in England, so English law might appear irrelevant. While it is difficult to believe that Shakespeare knew much about the law of Vienna, he could have known the dictates of the Council of Trent relating to formation of marriage, which generally governed in Catholic countries. The Vienna of the play is undoubtedly Catholic, what with its abundance of friars and pseudo-friars hearing confession and performing other ceremonies. As we shall see, the marriage law in the play is consistent with the prohibition by the Council of Trent of non-ceremonial marriages. But if Shakespeare deliberately applied Roman Catholic canon law in this play, it would have been a departure from his usual practice. The law in Shakespeare’s plays is generally either English law or something completely fanciful, such as the imposition of capital punishment for fornication. Shakespeare’s law may be a mixture of the two, such as in Merchant of Venice, where the contract law is grounded in common-law principles but the Venetian Alien Statute is made up. In this paper, I will assume that English law applies, especially as that is far more interesting than assuming the applicability of Catholic canon law or something Shakespeare made up which coincidentally matches Catholic law.

In Shakespeare’s principal English source, George Whetstone’s two-part play Promos and Cassandra (c. 1578), the deputy (Promos) secures Cassandra’s consent to sexual intercourse by promising to marry her as well as to reprieve her brother from a

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20 See, also, e.g., Garber, op. cit. supra at 566.

21 It appears that 19th Century law in Japan was even harsher, prescribing decapitation for flirting with a woman to whom one is not connubially linked. See Ex parte Ko Ko (Titipu Tn. Ct., Pooh Bah, C.J.), reported in Gil. & Sull., [Crown Pleas of] The Mikado. A similarity between the situations in Vienna and Titipu has been observed before. See Bennett, op. cit. supra n.7 at 19, 25, 158.

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death sentence for fornication (First Part, IV.ii).\textsuperscript{22} Earlier, he tried to seduce her by telling her that he “may” marry her after the act was complete, but she refused as that was too “unsure” (\textit{id. III.ii}).\textsuperscript{23} Naturally, Promos broke his promise but the king compelled him to keep it (Second Part, III.iii).\textsuperscript{24} There is no suggestion that the act of intercourse was anything but a form of rape, certainly not the consummation of a marriage. Nor does the cause for which Cassandra’s brother was condemned match Claudio’s situation: The former had congress with a common whore, so no talk of marriage was probable (First Part, I.ii); and Whetstone’s prefatory argument calls it “adultery.”\textsuperscript{25}

Unlike the situation in \textit{Promos and Cassandra}, the characters in \textit{Measure for Measure} have some notion that sex between betrothed couples is excusable and contributes in a vague way to the creation of a formal marriage, although it might not be sufficient in itself. Thus, Claudio tells Lucio (I.ii.145-53):

\begin{quote}
Thus stands it with me: upon a true contract
I got possession of Julietta’s bed.
You know the lady; she is fast my wife,
Save that we do the denunciation lack
Of outward order. This we came not to,
Only for propagation of a dow’r
Remaining in the coffers of her friends,
From whom we thought it meet to hide our love
Till time had made them for us.
\end{quote}

In other words, Claudio and Julietta were validly betrothed and, although solemnization was subject to the receipt of her dowry, they regarded themselves as married and acted accordingly. Claudio’s use of the term “fast my wife” suggests handfasting. Technically, this is imprecise, as “handfasting” seems to have been used to denote only marriages \textit{per verba de præsenti} and the existence of a condition to the marriage is inconsistent with that form; but Claudio can be forgiven for such a trivial slip.

\textsuperscript{22} G. Bullough, \textit{NARRATIVE AND DRAMATIC SOURCES OF SHAKESPEARE}, Vol. 2, p. 468 (Routledge & Kegan Paul 1958). Bullough does not provide line numbers, so I cite the pages at which the text appears.

\textsuperscript{23} \textit{Id.} at 460.

\textsuperscript{24} \textit{Id.} at 499.

\textsuperscript{25} \textit{Id.} at 444-45, 447.
The same sentiment is expressed hypothetically by the Claudio in *Much Ado About Nothing*. When he declines to marry Hero because of her suspected infidelity, Leonato is about to protest that this would be unfair if it was Claudio himself with whom she was intimate and Claudio anticipates him (IV.i.48-50): “If I have known her | You will say she did embrace me as a husband, | And so extenuate the forehand sin.”

William D’Avenant’s play *The Law Against Lovers* (c.1661), which conflates *Measure for Measure* with *Much Ado About Nothing*, retains a version of Claudio’s description of his relationship with Julietta, but revises it significantly (I.[ii]):

She is my wife by sacred vows and by
A contract seal’d with forms of witnesses.
But we the ceremony lack of marriage;26

Beatrice expresses the same opinion in D’Avenant’s play, focusing on her cousin Julietta who has also been imprisoned:

… Is she not married by such vows
As will stand firm in Heaven? That’s the substantial part
Which carries the effect, and must she then
Be punisht for neglect of form?27

Beatrice “would have <her> cousin’s spiritual marriage | Stand good in conscience, though ’tis bad in law.”28

Thus, it appears that D’Avenant was uncomfortable with the vagueness of “true contract” and “fast my wife” and preferred to strengthen the non-ceremonial ties by something approaching a formal wedding. Since English law did not require an oath or witnesses (a mere private declaration of intention sufficed), D’Avenant’s formulation

26 THE DRAMATIC WORKS OF SIR WILLIAM D’AVENANT, Vol. V at p.126 (Russell & Russell 1964). This text does not number scenes (treating each act as containing only one scene), so I have inserted more accurate scene numbers in square brackets. Unfortunately, the volume also lacks line numbers, so I cite to the page numbers of quoted text.

27 Law,II.i, id. at 136.

28 Ibid.
is even more confusing than Shakespeare’s and a great deal prissier. In the same vein, D’Avenant has Lucio tell Isabella:

Married they are in sight of heaven, though not
With such apparent forms as make the law
Approve and witness it.

Even the strait-laced Isabella was of the same view in D’Avenant’s version; though she can’t resist upbraiding Julietta for yielding her honour, a sacred public trust. Isabella greets Julietta in prison with

Have comfort sister! I must call you so;
Though the uncivil law will not allow
You yet that name.

Inconsistently, Isabella then attempts to seduce Julietta to take her place in Angelo’s bed (IV.[iii]). Perhaps D’Avenant felt that Julietta’s prior loss of virtue made her eligible for any sexual escapade. Of course, if Claudio and Julietta’s vows per verba de futuro cum copulo had the effect of marrying them, any later intercourse by Julietta with Angelo would have been adultery; so it seems that D’Avenant was under no such impression.

Up to this point, D’Avenant’s play generally follows the plot of Shakespeare’s. The denouement, however, varies considerably. Most especially, there is no occasion for the bed trick, as Angelo acknowledges that his offer to pardon Claudio in exchange for Isabella’s virginity was only a ploy to test her mettle as a prospective wife (IV.[vi]), and, to make assurance doubly sure, Benedick foments an unnecessary insurrection to protect Isabella (V.[ii-iii]). In fine, Angelo and Isabella are betrothed (as are Beatrice

\[29\] I.[iv], id. at 130.  
\[30\] Id. at 173.  
\[31\] Ibid.  
\[32\] Id. at 175-76.  
\[33\] Id. at 189.  
\[34\] Id. at 193 et seq.
and Benedick),\textsuperscript{35} after an announcement that a ceremonial wedding between Claudio and Julietta took place in the prison.\textsuperscript{36}

Under the English law as summarized by Blackstone, the dowry condition to the Claudio/Julietta marriage ceased to be an impediment to regarding the betrothdal as a marriage once the parties consummated the relationship; a church ceremony to confirm it could be compelled but was unnecessary to the legality of the marriage. Of course, as Claudio says, they found it expedient to conceal the full extent of their involvement in order not to prejudice the receipt of Julietta’s dowry; but that would not affect the lawful status of their marriage. Thus, under this view, the very act for which Claudio was condemned to lose his head actually created the relationship, which negated the crime – sexual intercourse with one’s wife is not fornication. On the other hand, the law governing conditional \textit{per verba de futuro} betrothals was less clear than that applicable to \textit{de præsenti} marriages. It seems to be well understood, however, that a conditional promise did not create a present marriage.\textsuperscript{37}

It appears that Shakespeare’s view of \textit{per verba de futuro} betrothals, even \textit{cum copulo}, was closer to that of the \textit{Millis} court. A number of incidents in this play, and others, point to this. Indeed, it seems likely that Shakespeare inserted the dowry condition into the Claudio/Julietta contract precisely in order to make clear that they were not married \textit{per verba de præsenti}, and that sexual relations between them were technically sanctionable.

If Blackstone was wrong and, as the \textit{Millis} case suggests, marriage could not validly be contracted \textit{per verba de future cum copulo}, or the confirmatory church ceremony was an essential element of such a marriage, Shakespeare correctly applied the English law as well as the post-Trent Catholic canon law. A sentiment suggestive of this view was expressed by the former maid in one of Ophelia’s song snatches (Ham,IV.v.62-66):

\textsuperscript{35} V.[v], \textit{id} at 210-11.

\textsuperscript{36} V.[v], \textit{id}. at 204.

\textsuperscript{37} See, \textit{e.g.}, the interrogation in \textit{Hawes v. Grimshawe} (DL/C/219/236\textsuperscript{r}), quoted at Giese 125.
“Quoth she, ‘before you tumbled me.
You promis’d me to wed.’”

(He answers.)
“‘So I would ’a’ done, by yonder sun,
And thou hadst not come to my bed.’”

The circumstances of Angelo’s betrothal to Mariana are identical to that of Claudio and Julietta – up to a point – and were almost certainly intended to parallel the latter situation in order to highlight Angelo’s hypocrisy. Angelo, like Claudio, engaged himself to marry Mariana subject to the condition that he receive a specified dowry (III.i.213 et seq.). However, unlike Claudio, he broke off the engagement after the dowry was lost at sea and before the marriage might have been consummated cum copulo (ibid; V.i.214-22). It is somewhat harsh of the Duke to accuse Angelo of having “swallowed his vows whole” (III.i.226), as those vows were subject to a condition which became impossible to fulfill and Angelo, therefore, was within his rights in terminating his engagement; but, of course, it was churlish of Angelo to accuse Mariana of loose conduct rather than own up to his insistence on the financial settlement he bargained for.38

At first the Duke seems to regard the betrothal as a valid marriage in itself. When he persuades Mariana to participate in the bed trick he says (IV.i.72-74):

He is your Husband on a pre-contract.
To bring you thus together, ’tis no sin,
Sith that the justice of your title to him
Doth flourish {justify} the deceit.

Of course, as we shall shortly see, the Duke sings a very different tune when he compels Angelo to undergo a church wedding. Perhaps the apparent inconsistency can be harmonized by assuming that the Duke’s seduction of Mariana to the bed trick was calculated to assuage her qualms by convincing her that she was in fact already married to Angelo. His use of the term “pre-contract” is suggestive in this regard, as that expression may have been a synonym for marriage per verba de præsenti (see Ingram 190-91). Of course, as the authorities I discuss above make clear, a betrothal conditioned on or defea-

38 Sokol 28-29 makes the same point.
sible by a future occurrence does not qualify as a *per verba de præsenti* marriage, as the Duke should have known.\(^{39}\)

Moreover, even if Angelo’s conditional engagement to marry Mariana is considered as a *per verba de futuro* betrothal, there are three obvious points of distinction which make the bed trick insufficient to create a marriage between them under English law (assuming that English law recognized such marriages), or even to resurrect the broken engagement: (1) Angelo had already lawfully terminated the betrothal and could not be held to honour it without a fresh promise; (2) Angelo did not intend by his intercourse with a woman he thought was Isabella to marry Mariana or to waive the condition of his betrothal to her; (3) indeed, the deception perpetrated on Angelo invalidates the effectiveness of his act. A commitment made in reliance on a misrepresentation by the other party is not binding.\(^{40}\) Whether the putative marriage or betrothal is regarded as void or voidable, Angelo was not married to Mariana as a result of his copulation with her, nor could he lawfully be compelled to wed her as a matter of spousal contract law. The principle may be different if we regard the Duke’s insistence on a formal marriage not as the proper solemnization of a valid spousal obligation but, rather, as a form of punishment akin to Lucio’s,\(^ {41}\) or as penance for Angelo’s sin (if the Duke was still labouring under the influence of his clerical masquerade).

Lucio’s compelled wedding to Kate Keepdown is consistent with this. Although it clearly appears intended to be punitive (V.i.522-23) rather than restitution, it provides some evidence that Shakespeare regarded intercourse of a betrothed couple as meretricious to some extent, not as the consummation of a valid marriage. It seems that Lucio

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\(^{39}\) Another curiosity in the Duke’s behaviour – which is hardly exemplary anywhere – is that this liberality would seem contrary to his expressed intention of suspending his governance in order to restore teeth to laws which his laxity caused to be disregarded (I.iii.19 *et seq.*). At the very least, his aiding and abetting a violation of the statute for which Claudio was condemned to lose his head is questionable.

\(^{40}\) See, *e.g.*, *Restatement of the Law, Second – Contracts* §§ 163, 164. In particular, there seems no doubt that a trick designed to create a semblable marriage is ineffectual to do so. See, *e.g.*, the depositions in *Hollingworth v. Hyde* (DL/C/215/121 *et seq.*), quoted at Giese 144-45. But some commentators have taken the position that the bed trick did create a valid marriage (see Sokol 28 & n.47).

\(^{41}\) See Sokol 42-43.
promised to marry Kate (III.ii.199-201), although it is not clear whether the promise was made before or after he impregnated her – if before, it could have formed the basis of a marriage per verba de futuro cum copulo, if Shakespeare recognized such.

The question of whether Shakespeare expected us to understand that Angelo and Mariana were married ipso facto upon the bed trick is murky, notwithstanding the Duke’s comforting words to Mariana when he persuaded her to do it. But it seems likely that some impression similar to that was expected to arise in the minds of the audience, even though it seems probable that Shakespeare did not regard per verba de futuro cum copulo situations as creating valid marriages. Although the Duke compels Angelo to marry Mariana in a formal religious ceremony (V.i.377-79):

Go take her hence, and marry her instantly.
Do you the office, friar, which consummate,
Return him here again.

and only then does he refer to Angelo as a “new-married man” (l.400), it is also true that Mariana regards Angelo as her “husband” as a result of their intercourse (V.i.186-204) by which Angelo “knew <her> as a wife” (l.230). Of course, Mariana is wrong; the bed trick did not create a marriage, but she may be forgiven for thinking so, or wishing so in order to preserve her image of chastity. When confronted by the evidence, even Angelo seemed willing to give effect to the former contract (II.375-76), although he was not legally obliged to do so and the text is sufficiently ambiguous to allow the inference that the Duke was so insistent that Angelo felt he was without a choice.42

The conundrum is beautifully summed up by Mariana herself, who at that point is “neither maid, widow nor wife” (II.178-79):

My lord, I do confess I ne’er was married,
And I confess besides I am no maid.

42 There are similar elements in Double Falsehood or the Distrest Lovers, Lewis Theobald’s 1727 play which he claimed was a revision of mid-seventeenth century manuscripts of a lost Shakespearean play (probably the 1613 Cardenio attributed to Fletcher and Shakespeare) based on a tale in Book I of Don Quixote. But in that play the seduction (or rape) of Violante by Henriquez was not preceded by a betrothal – in fact, Violante refused his proposal -- and the forced marriage ceremony between Henriquez and Leonora is not preceded by either a betrothal or sexual intercourse between them.
I have known my husband, yet my husband
Knows not that ever he knew me. (ll.184-87)

In short, Shakespeare’s presentation of the law is confused, but so it seems was the law. Under English law as Blackstone understood it, but not under other views of the English law and certainly not under Catholic canon law after 1563, Claudio and Julietta were lawfully married and Claudio could not have been guilty of fornication. But, given the confused state of the law, Shakespeare could be forgiven for the slip, if slip it was. The situation between Angelo and Mariana, on the other hand, is clearer legally but murkier as a matter of what Shakespeare expected his audience to understand. Under no reasonable view of the law did the bed trick oblige Angelo to fulfill his previously rescinded contract; but Shakespeare seems to have expected his audience to understand that it created a right to compel Angelo to undergo a Church wedding. If, as Blackstone said (contrary to the later view of the Lords in the Millis case), an engagement *per verba de futuro cum copulo* established a right to compel a marriage ceremony, Shakespeare would have been correct were it not for the impediments of lack of consent and fraud. But, of course, Shakespeare wrote a play, not a law review article.