



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 343

COURSE TITLE: FAMILY LAW I

**COURSE
GUIDE**

**LAW 343
FAMILY LAW I**

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Introduction

Family law is concerned with the law regulating the affairs of the family and family property. The Nigerian family law, as would be seen in the historical perspective was adopted from the English legal system based solely on the fact that we inherited the English legal system by reason of our affiliation with them through the instrument of colonialism. The practice of family law is influenced by the general legal context that prevailed in England. The major statutes that guide family law in Nigeria are the Marriage Act and Matrimonial Causes Act, as contained in the Laws of the Federation 1999. This course deals with basic points typical and relevant as found in the Commonwealth jurisdiction most of which gained independence from Britain. These topics generally border on the relationship within the family in Nigeria. They most importantly touch on the underlying values and features which concern the way which family law is put to use in a democratic and law governed society.

What You Will Learn in This Course

This Course Guide tells you briefly what to expect from reading this course. The study of family law is to familiarise you with this subject matter which is dealt with herein and of which you are expected to know much about after reading through.

Course Aims

The aim of the course is to help you become reasonably well-informed about family law.

Course Objectives

The major objectives of this course as designed are to enable you to know all the relevant enactments and legislations in relation to family law in Nigeria. Also you should be able to:

- (a) Identify the differences between the various types of marriages i.e. customary and statutory marriages
- (b) Explain the rights, duties and obligations of the parties under a customary marriage
- (c) Determine when a party is actually married under the law
- (d) Explain the jurisdiction of courts
- (e) Explain the judicial remedies available to a party whose rights have been wrongly infringed within the family set up
- (f) Outline the basic operational features of the family system
- (g) Differentiate between customary and statutory marriages
- (h) Explain ways and manners disputes arising from breach of contract of marriage could be redressed
- (i) Identify the basic ingredients, operations and effects of separation of the marriage.

Working through this Course

For you to excel in this course, you are required to carefully read each unit, and understand the contents. You are also required to attempt each self-assessment exercise and submit your assignment for assessment purposes. Apart from studying the course material on your own, you also need to attend tutorial sessions for exchange of ideas with your Facilitator.

You are expected to compile the questions that trouble you and the grey areas in the course materials and bring these for discussion with fellow learners and the Facilitator. You are expected to carve out specific time each day, every day for your study. Try to form good study habits. Remember that you are a self-learner; in other words, you are on your own. If you study hard everyday and do your assignments, you will achieve your goal.

Course Materials

You will be provided with the following materials:

- (a) The Course Guide
- (b) The Course Material containing study units
- (c) References as well as sources for further reading
- (d) The Assignment File
- (e) The Presentation Schedule.

Study Units

The study units in this course are as follows:

Module 1

Unit 1	Content of Family Law
Unit 2	Sources of Family Law
Unit 3	The Nature of Family Law
Unit 4	Family Property and Sources of Family Law
Unit 5	Courts of Record
Unit 6	The Nigerian Court System

Module 2

Unit 1	Engagement
Unit 2	Legal Requirement for the Conclusion of a Valid Marriage
Unit 3	The Marriage of a Minor and Other Types of Marriages
Unit 4	Void and Voidable Marriages
Unit 5	Grounds on which a Marriage is Voidable
Unit 6	Invalid Marriages under Customary Law

Module 3

Unit 1	Legal Effects of Marriage I
Unit 2	Legal Effects of Marriage II
Unit 3	Legal Effects of Marriage III
Unit 4	Jurisdiction in Statutory Marriages
Unit 5	Jurisdiction in Customary Law Marriages

Module 4

Unit 1	The Dissolution of Marriage (Statutory Marriage)
Unit 2	Grounds for Divorce I
Unit 3	Grounds for Divorce II
Unit 4	Grounds for Divorce under Customary Law I

Module 5

Unit 1	The Court Process I
Unit 2	The Court Process II
Unit 3	The Court Process III

References/Further Reading

Certain books have been recommended in the course. You should read them where so directed before attempting to do the exercise.

All these units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the scope of Family Law generally. You will then have a clearer picture into which to paint these topics. Subsequent courses are written on the assumption that you have completed these units.

Each study unit consists of one week's work and includes specific objectives, directions for study, reading materials and Self Assessment Exercises (SAEs). Together with Tutor-Marked Assignments (TMAs), these exercises will assist you in achieving the stated learning objectives of the individual units and of the entire course.

The Assignment File

Here you will find all the details of the work you must submit to your Tutor for marking. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment File itself and later in the section on assessment in this Course Guide. There are 15 Tutor-Marked Assignments in this course; you should also do at least 12.

Assessments

There are two types of assessment for this course: the Tutor-Marked Assignment (TMA) and the end of course examination.

In tackling the assignments, you are expected to apply the information, knowledge and techniques you gathered during the course. The assignments must be submitted to your Tutor for formal assessment in accordance with the deadlines stated in the **Presentation Schedule** and the **Assignment File**. The work you submitted to your tutor will count for 30% of your total course mark.

At the end of the course, you will need to sit for a final written examination of three hours. This examination will count for 70% of your total course mark.

Tutor-Marked Assignment (TMAs)

There is a Tutor Marked Assignment (TMA) at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (Tutor- Marked Assignment) form, to your Tutor. Make sure that each assignment reaches your Tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your Tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The end of course examination carries 70% of the total score for the course. You will be notified of the time of the examination. You should prepare thoroughly for the examination by studying very hard. You should also submit yourself for the examination.

The Presentation Schedule

The Presentation Schedule included in your course material gives you the important dates for this year for the completion of Tutor-Marked Assignments (TMAs) tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

Course Marking Scheme

The following table lays out how the actual course marking is broken down:

ASSESSMENT	MARKS
Assignment 1 – 4 (TMAs) (the best three of all the assignments submitted)	Four assignments. Best three marks of the four count at 30% of course marks
Final Examination	70% of overall course marks
Total	100% of course marks

Course Overview

This table brings together the units and the number of weeks you should take to complete them and the assignment that follow them.

Unit	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide		
Module 1			
1	Content of Family Law		
2	Sources of Family Law		
3	The Nature of Family Law		
4	Family Property and Sources of Family Law		
5	Courts of Record		
6	The Nigerian Court System		
Module 2			
1	Engagement		
2	Legal Requirement for the Conclusion of a Valid Marriage		
3	The Marriage of a Minor and Other Types of Marriages		
4	Void and Voidable Marriages		
5	Grounds on which a Marriage is Voidable		
6	Invalid Marriages under Customary Law		
Module 3			
1	Legal Effects of Marriage I		
2	Legal Effects of Marriage II		
3	Legal Effect of Marriage III		
4	Jurisdiction in Statutory Marriages		
5	Jurisdiction in Customary Law Marriages		
Module 4			
1	The Dissolution of Marriage (Statutory Marriage)		
2	Grounds for Divorce I		
3	Grounds for Divorce II		

4	Grounds for Divorce Under Customary Law		
Module 5			
1	The Course Process I		
2	The Court Process II		
3	The Court Process III		
	Revision		
	Total		

How to Get the Most from this Course

In distance learning, the study units are specially developed and designed to replace the university lecturer. Hence, you can work through these materials at your own pace, and at a time and place that suit you best. Visualise it as reading the lecture instead listening to a lecturer.

Each study unit follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you must go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a *reading section*. You will be directed when you need to use a computer and guided through the tasks you must do. The purpose of the computing work is two-fold. First, it will enhance your understanding of the material in the unit. Second, it will give you practical experiences of using programmes which you could well encounter in your work outside your studies. In any event, most of the techniques you will study are applicable on computers in normal working practice, so it is important you encounter them during your studies.

Activities are interspersed throughout the units, and answers are given at the end of the units. Working through these tests will help you to achieve the objectives of the units and prepare you for the assignments and the examinations. You should do each activity as you come to it in the study unit. There are also numerous examples given in the study units, work through these when you come to them, too.

The following is a practical strategy for working through the course. If you run into any trouble, telephone your Facilitator or post the questions on the Web CT OLE's discussion board. Remember that your Facilitator's job is to help you. When you need help, don't hesitate to call and ask your Tutor to provide it. In summary:

1. Read this Course Guide.
2. Organise a study schedule. Refer to the course overview for more details. Note the time you are expected to spend on each unit and how the assignments relate to the unit. Important information e.g. details of your tutorials, and the date of the first day of the semester is available from the Web CT OLE. You need to gather together all this information in one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates for working on each unit.
3. Once you have created your own study schedule, do everything you can to stick to it. The major reason that students fail is that they get behind with their coursework. If you get into difficulties with your schedule, please let your Facilitator know before it is too late for help.
4. Turn to Unit 1 and read the introduction and the objectives for the unit.
5. Assemble the study materials. You will always need both the study unit you are working on and one of your set books, on your desk at the same time.
6. Work through the unit. The content of the unit itself has been arranged to provide a sequence for you to follow. As you work through, you will be instructed to read sections from your set books or other materials. Use the unit to guide your reading.
7. Keep an eye on the Web CT OLE. Up-to-date course information will be continuously posted there.
8. Well before the relevant due dates (about 4 weeks before the dates) access the Assignment File on the Web CT OLE and download your next required assignment. Keep in mind that you will learn a lot by doing the assignments carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due dates.

9. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study material or consult your Tutor.
10. When you are confident that you have achieved a unit's objectives, you can then start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
11. When you have submitted an assignment to your Tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your Facilitator's comments. Consult your Tutor as soon as possible if you have any questions or problems.
12. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives and the course objectives.

Facilitators/Tutors and Tutorials

There are 20 hours of tutorials (ten 2-hour sessions) provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the names and phone number of your tutor, as soon as you are allocated a tutorial group.

Your Tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter as they would provide assistance to you during the course. You must mail your Tutor-Marked assignments to your Tutor well before the due date (at least two working days are required). They will be marked by your Tutor and returned to you as soon as possible. Do not hesitate to contact your Tutor by telephone, e-mail, or the discussion board if you need help. The following might be circumstances in which you would find help necessary: when

- (f) You do not understand any part of the study units or the assigned readings.
- (g) You have difficulty with the self-tests or exercises.
- (h) You have a question or problem with an assignment with your tutor's comment on an assignment or with the grading of an assignment.

You should try your possible best to attend the tutorials. This is the only chance you have to have face-to-face contact with your Tutor and to ask

questions which are answered instantly. You can raise any problem you encounter in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participations in discussions.

Summary

The course examines the contents of Family Law. The course is designed and developed for your benefit as a law student.

We hope that you will find this course interesting and exciting. The course is a living course. As you go through it, you will develop more insight into family law and family property.

We hope you will enjoy your relationship with the National Open University of Nigeria (NOUN). We wish you success in this course. Success in this course will help you attain your life goals. Best wishes.

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MODULE 1

Unit 1	Content of Family Law
Unit 2	Sources of Family Law
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Unit 6	The Nigerian Court System

UNIT 1 CONTENT OF FAMILY LAW

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1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	What is “Family Law”?
3.1.1	What is a Family?
3.2	The Nature of Marriages
3.3	Definition and Types of Marriages in Nigeria
3.3.1	Types of Marriage
3.3.1.1	Monogamous Marriage
3.4	Customary Law
3.5	Judicial Precedent
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

1.0 INTRODUCTION

Family law is a branch of private law. The law comprises those legal rules or norms which regulate the legal relationship between spouses (husband and wife), parents and children, and guardians and wards.

The conduct of the people in any organised society must be regulated in order to ensure stability and social harmony and this is done through the mechanism of the law which has been coded unto the Matrimonial Causes Act of 2004. We shall predicate our definitions of family law on those perceptions in the Matrimonial Causes Act in order to give a clear understanding of this phenomenon.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define family law generally
- explain the operation of family law
- show how family law is related to the other branches or fields of law.

3.0 MAIN CONTENT

3.1 What is “Family Law”?

The family is the smallest unit in the social structure of every society. It is accepted that the family is the basis of every human community and the family may be regarded as the nucleus of society.

Family law deals with the law regulating the legal relationship between spouses (i.e. husband and wife) the legal relationship between a guardian or curator and the person who is subject to guardianship or curatorship.

3.1.1 What is a Family?

The term “family” does not lend itself to easy and precise definition. In one sense the family may be defined as including all persons with common ancestors. Under this wide connotation, the family may embrace a large body of persons related by blood to a common ancestor. The relationship may be traced through males, as in patrilineal societies or through females in matrimonial societies. The extended family, a concept which is prevalent in Africa may also be included in this wide definition of family. Green defines the extended family as: “...a group of closely related people, known by a common name and consisting usually of a man and his wives and children, his son’s wives and children and probably other near relations”.

The term “family” may still be given a much more restricted connotation. It may refer to a smaller group consisting of a household – the man, his wife, the children and probably the dependants who live with him. This is much closer to the concept of family in English law, which is restricted to the man, his wife and children.

For the purpose of this study, the family will be treated as a unit comprising the man, his wife or wives and the children.

3.2 The Nature of Marriages

Marriage is a universal institution which is recognised and respected all over the world. As a social institution, marriage is founded on, and governed by the social and religious norms of the society.

Consequently, the sanity of marriage is a well – accepted principle in the world community. Marriage is the root of the family and of society.

3.3 Definition and Types of Marriages in Nigeria

It is universally accepted that marriage, being a union of man and woman, involves two persons of opposite sex. Consequently, sex constitutes an essential determination of a marriage relationship. In order to establish the existence of a valid marriage, it must be proved that the persons involved are man and woman.

Ordinarily, this seems a straight forward question; the issue has been complicated by the existence of hermaphrodites and pseudo – hermaphrodites and advances in medical science which have made sex change operations feasible. In the English case of *Corbett V Corbett* (1947) All ER 187, the petitioner and the respondents had gone through a marriage ceremony in September, 1963. The petitioner knew that the respondents had been registered at birth as a male and had in 1960 undergone an operation for the removal of the testes and created an artificial vagina, since the operation, the respondents had lived as a woman. In December 1963, the petitioner filed a petition for a declaration that the marriage was null and void because the respondent was a person of the male sex or alternatively for a decree of nullity on the ground of either in capacity or willful refusal to consummate. The court held that the respondent had remained at all times a biological male and that accordingly, the so – called marriage was void.

3.3.1 Types of Marriage

Unlike most European countries, two systems of marriages are recognised in Nigeria – the monogamous and polygamous systems. These two differ fundamentally in character and incident. It is important to keep this dualism in view in every consideration of the marriage laws in Nigeria.

3.3.1.1 Monogamous Marriage

A monogamous marriage in Nigeria is the same as in England. It is a marriage which Lord Penzance described in *Hyde V Hyde* (1886) LRIP&D 130 as the voluntary union for life of one man one woman to the exclusion of all others. The laws which govern the celebration and

incidents of monogamous marriage in Nigeria is the Matrimonial Causes Act of 1970.

3.4 Customary Law

Certain rules of conduct are observed because they have become customary in the sense that they are respected by a substantial group of people. Customary law does not consist of written rules. It develops from the views of the community and is carried on from generation to generation. For a custom to become a legal rule, it must conform to the following requirements:

- (a) it must be reasonable
- (b) it must have existed for a long time
- (c) it must be generally recognised and observed by the community
- (d) the contents must be certain and clear
- (e) it must not be repugnant to natural justice, equity and good conscience

SELF ASSESSMENT EXERCISE 1

Discuss the term monogamous marriage

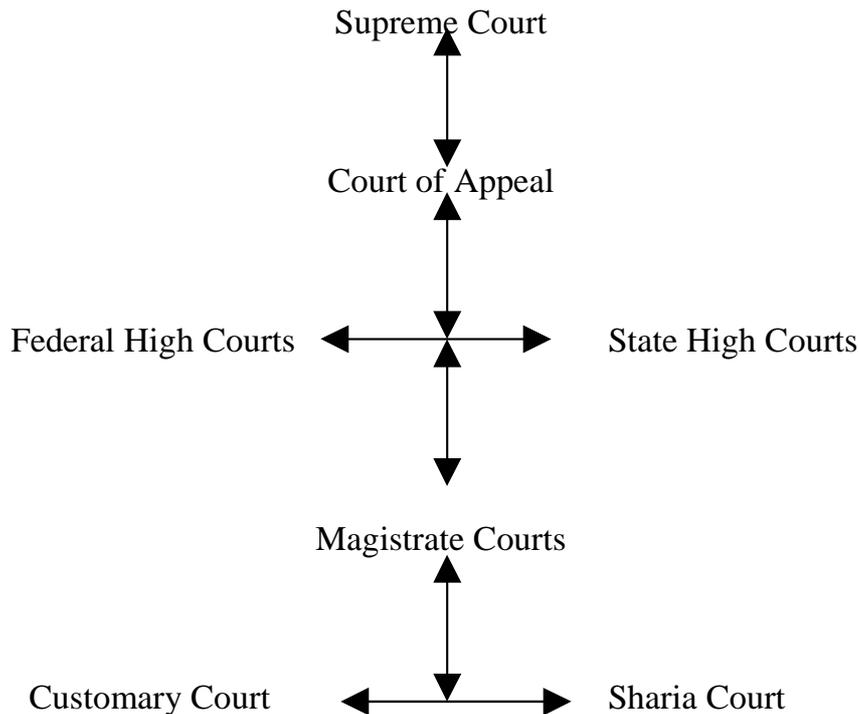
3.5 Judicial Precedent

Judicial precedent is a source of law. Judicial precedent or case law consists of laws found in judicial decisions. A judicial precedent is therefore based on judicial opinions. These judicial decisions are reported in the various Nigeria law reports. The Constitutional structure of the Nigerian judicial system is shown in the chart below.

SELF ASSESSMENT EXERCISE 2

Discuss the jurisdiction of courts on customary and statutory marriages in Nigeria.

NIGERIAN COURTS



SELF ASSESSMENT EXERCISE 3

Identify the hierarchy of courts within the Nigerian legal system.

4.0 CONCLUSION

You must have seen what a valid marriage is all about, the brief history of Family Law and the hierarchy of courts in Nigeria.

5.0 SUMMARY

This unit has taught the content of family law:

Marriage laws
Statutory and
Customary Marriages

6.0 TUTOR-MARKED ASSESSMENT

1. Discuss the powers of the Federal High Court on the jurisdiction on matrimonial causes matters.
2. Discuss monogamous marriage and the laws that govern it in Nigeria.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statutes*. Lagos: Malthouse Publishers.

Onokah, M. C. (2003). *Family Law in Nigeria*. Enugu: Spectrum Publishers.

Nwogugu (2001). *Family Law in Nigeria*. Ibadan: Heinemann Educational Books.

Aderibigbe, Remi (2004). *Family Law in Nigeria*. Lagos: Codes Publishers.

Matrimonial Causes Acts and Rules.

UNIT 2 SOURCES OF FAMILY LAW

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- 3.0** Main Content
 - 3.1 What is Family Law?
 - 3.2 Requirements for Marriage
 - 3.3 Consequences of Marriage
 - 3.4 Dissolution of Marriage
 - 3.5 Links between Family Law and other Branches of Law
 - 3.6 Polygamous Marriage
 - 3.7 Which Fields are covered by Family Law?
 - 3.8 The Law of Husband and Wife or the Law of Marriage
 - 3.9 Marriage
 - 3.9.1 Requirements for Marriage
 - 3.9.2 Legal Effects of Marriage
 - 3.9.3 Cohabitation
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Before you commence with this unit you must first have read the first study manual carefully.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain family law
- state what family law deals with
- show how family law relates to the other branches or fields of law.

3.0 MAIN CONTENT

3.2 What is Family Law?

Family law is treated as a private field of law. Private law deals with the law regulating the private relationship between legal subjects on an equal footing. Family law is both intricate and wide. The family is the basis of the society. The branches of this aspect of law include matrimonial law, juvenile law, law of inheritance, and family dispute resolution.

Family law deals with the law regulating the relationship between spouses (i.e. husband and wife), between parent and child and between juvenile and guardian.

The word “family” has a wide and a narrow meaning. Although an extra – marital relationship where a couple lives together may result in a type of “family” this relationship is not a valid marriage.

Marriage is a universal institution and it is the root of a family and the society. It is characterised by the acquisition of status. It is also a social and religious norm of a society.

3.2 Requirements for Marriage

The requirement for marriage includes the capacity to undertake a contract along with its formalities. If one or more of the requirement for a valid marriage is absent, the marriage is void or voidable, depending on which requirement is not met. The law relating to void and voidable marriages also forms part of the law of marriage.

3.3 Consequences of Marriage

Some of the consequences of marriage are valuable why others are not. The invariable consequences of marriage are those which cannot be changed by the spouses. They are prescribed by law and cannot be altered. They relate to the status, the attainment of majority on marriage, the consortium *omnis vitae*, the protection of the marital relationship against interference by third parties, the duty of maintenance between the spouses, the acquisition of parental power by the spouses’ acceptance of the husband’s surname (which is not compulsory). The valuable consequences of marriage can freely be altered by the parties i.e acquisition of properties.

3.5 Dissolution of Marriage

Death, Divorce, Annulment

The law regulating to the dissolution of marriage can be divided into the law regulating dissolution of marriage by the death of one or both of the spouses, divorce and the law regulating annulment of marriages.

The law of divorce consists of the rules on the grounds for divorce and rules on the consequences of divorce. The consequences of divorce relate to distribution of assets held jointly by the spouses, maintenance of the spouses and the interests of the children. As regards the interests of the children, the law of divorce determines who is to have

guardianship of a child of divorcing parents, who is to have custody of the child, whether the other parent will have access to the child and who will pay maintenance for the child.

3.5 Links between Family Law and other Branches of Law

Family law forms a separate branch of private law. It is not a completely independent field which is divorced from the other sources of law.

3.6 Polygamous Marriage

A polygamous marriage may be defined as a voluntary union for life of one man with two or more wives. Its essential characteristic is the capacity of the man to take as many women as he pleases. Polygamy in Nigeria is a customary law institution therefore the character and incidents of that system are governed by customary law. There is no single uniform system of customary law prevailing throughout Nigeria. In Nigeria the term “customary law” generally includes Islamic law.

3.7 Which Fields are covered by Family Law?

Family law consists principally of three broad fields. It includes the law relating to husband and wife, the law relating to parent and child and the law relating to guardianship and custody.

3.8 The Law of Husband and Wife or the Law of Marriage

The law of marriage consists of the rules regulating to engagement and marriage. The law in respect of engagement in customary law consists of the rules of customary law in each jurisdiction in respect of customary law.

In view of the plurality of customary laws in Nigeria, there is no single uniform system in customary law prevailing in Nigeria but essentially there are vital ingredients of the rule of engagement which must be conformed with for there to be a proper and valid marriage under the customary law. For marriage under the Act, that is Matrimonial Causes Act the law in respect of engagement consists of the rules regulating the requirements for a valid engagement.

3.9 Marriage

The law in respect of marriage deals with legal requirements for a valid marriage, the consequences of marriage and the dissolution of marriage. These include church marriage, marriage in Nigeria’s diplomatic

missions, church blessing, marriage at the marriage registry and celebration of marriage.

3.9.1 Requirements for Marriages

The celebration of monogamous marriage in Nigeria is regulated by the Marriage Act i.e. the Matrimonial Causes Act of 1970 and stated therein are some of the basic requirements that must be conformed with for a marriage to be valid, the condition precedent relate to capacity, consent, lawfulness and the formalities. If one of the conditions stated therein is absent, the marriage is void or voidable depending on the circumstances of each case. The laws relating to void or voidable marriage are essential parts of law of marriage.

The celebration of polygamous marriage in Nigeria is regulated by various rules of custom existing in each society. There is no single uniform system of customary law prevailing throughout Nigeria. Customary law possesses three unique features: it is unwritten, it outfits change with time and but must not be repugnant to natural justice and good conscience. However, for a customary marriage to be valid it must conform to the essential requirements of capacity, consent, lawfulness and other formalities that make a customary marriage valid.

See: *Owonyin v Omotosho* (1961) ALL NLR. 304, 307: *Lewis V Bankole* (1909) I NLR 81.

3.9.2 Legal Effects of Marriage

Marriage is a contract where the parties enter into legal relations involving rights and obligations. This is true for the monogamous and the polygamous systems of marriage. The contractual aspect of the systems differs in material respect. The legal consequences of marriage are those which cannot be changed by the spouses; they are prescribed by law and cannot be altered. They relate to status of the spouses, consortium, (consortium omni vitae, the sanctity of marriage, the duty of maintenance between the spouses, acquisition of parental power, spouses and the wife's acceptance of her husband's surname(which is not compulsory).

3.9.3 Cohabitation

The general law in Nigeria does not recognise or give legal effect to cohabitation. Where a man and a woman have lived together regardless of the length of time as man and wife, there is a rebuttable presumption

that they lived together in consequence of a valid marriage. Our laws relating to husband and wife apply only where a formal marriage exists.

Customary law also distinguishes formal marriage from mere cohabitation. One important feature of customary law marriage is the payment of bride price in addition to other ceremonies. Where these are absent, the relationship is regarded as mere friendship to which the law relating to husband and wife does not apply. Under the traditional system, parties who are cohabiting without marriage are free agents because they are not bound by any of the obligations of marriage. Each part is free to associate with third parties of the opposite sex without evoking any legal sanction.

However, in some countries in Western Europe and the United States of America, legal effects have been given to the consensual cohabitation of adults. Sometimes the legal consequences which flow from cohabitation are similar to those of marriage.

4.0 CONCLUSION

We have examined what a valid marriage is all about, the brief history of family law and the hierarchy of courts in Nigeria.

5.0 SUMMARY

You should now be able to give an explanation of family law and show how it relates to other branches of law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Identify the various courts within the Nigeria legal system.
2. Discuss monogamous and polygamous marriages.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute*
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UNIT 3 THE NATURE OF FAMILY LAW

CONTENTS

- 1.0 Introduction
- 2.0 Objectives

- 3.0 Main Content
 - 3.1 Types of Marriage
 - 3.2 Dissolution of Marriage by Death, Divorce, Annulment
 - 3.3 The Law of Parent and Child
 - 3.4 Family Property (Immovable and Movable)
 - 3.5 Family Property under Native Law and Custom
 - 3.6 Slaves of Domestics
 - 3.7 Head of the Family
 - 3.8 Right in the Immovable Property of the Family
- 4.0 Conclusion
- 5.0 Summary
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1.0 INTRODUCTION

The Nature of the Family

The family is the smallest unit in the social structure of every society. It is generally accepted that the family is the basis of every human community and the family may be regarded as the nucleus of society. According to Nwogugu, “The family may be defined so as to include all persons with common ancestors. Under this wide connotation, the family may enhance a large body of persons related by blood, traced through males, as in patrilineal societies or through females as in matrilineal societies”.

Sometimes, the group included in the wide definition of “family” is referred to as the “extended family”, a concept which is prevalent in Africa.

Green aptly defines the “extended family” as: “a group of closely related people, known by a common name and consisting usually of a man and his wives and children, his sons’ wives and children and probably other near relations”.

The term “family” may be given a much more restricted connotation. It may refer to a smaller group consisting of a household, the man and his wife or wives the children and probably the dependants who live with him. This is much closer to the concept of family in English law, which is restricted to the man, his wife and children. In Nigeria the picture is slightly different because in some cases the law admits the taking of more than one wife. The extended family is usually a corporate body which may own property, such as land, in which its members have right.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain the “extended family”
- explain the nature of marriage
- explain marriage as a universal institution.

3.0 MAIN CONTENT

Marriage is the root of a family and the society. It is characterised by the acquisition of status. It is a social institution founded on, and governed by the social and religious norms of a society.

3.1 Types of Marriage

In Nigeria, marriage can be classified under two broad headings, the monogamous and the polygamous systems of marriage. This classification is crucial. In every case concerning marriage, the type of marriage should be ascertained, in order to determine the incidents of such marriage and the applicable law.

Although law is divided into various fields or branches, this systematisation operates mainly to make the law more accessible and easier to grasp. The law cannot be divided into a series of watertight compartments. The various fields are closely related and even overlap in many respects. Family law is related to and sometime overlaps with a number of other branches of law as discussed earlier. These include:

- (a) The law of succession: for example, the rights of surviving spouses.
- (b) The law of contract: e.g. engagement is a contract and with some exceptions, the general principles of law of contract apply to it.
- (c) Law of property: mode of acquisition of property as a married couple is also defined here.
- (d) Criminal law: for example, if a person fails to pay maintenance to his or her spouse and or children, this is a crime.
- (e) Law of procedure: for example, if one spouse wants to divorce the other there is a procedure to follow.
- (f) Constitutional law: for example, the rights enshrined in the Constitution.

SELF ASSESSMENT EXERCISE 1

1. Is customary law marriage considered as a valid marriage under the Nigerian law?
2. What are the two main divisions of family law?

3.2 Dissolution of Marriage by Death, Divorce, Annulment

Dissolution of marriage deals with marriage dissolved by the death of one or both of the spouses, by divorce or annulment.

The law of divorce consists of the rules on the grounds for divorce. These rules relate to the redistribution of assets among the spouses, interests of the children and determination of guardianship of a child between divorcing parents. That is, who is to have custody of the child, whether the other parent will have access to the child and other matters such as the court's jurisdiction in divorce matters and divorce procedure.

3.3 The Law of Parent and Child

Family law deals mainly with parental power i.e. the legal power of a parent over his or her child. It determines how parental power is acquired, what the contents of parental powers are how parental is terminated and under what circumstances the court may interfere with parental power.

3.4 Family Property (Immovable and Movable)

Family property under both native law and custom can be classified into:

“movable” and “immovable” or “real” and “personal” property.

Family property is that property in which every member of the family has an interest and is entitled as of right. Where the founder of the family marries under the native law and custom and dies intestate, then the property will devolve according to native law and custom. Where however, the marriage is under the Marriage Ordinance or Act and he dies intestate, the property will devolve according to the estate's law.

3.5 Family Property under Native Law and Custom

Immovable family property under the native law and customs is viewed not only from the point of physical immobility but also from the desire prevalent among the Nigerians from time immemorial to retain them in the family for all times.

Immovable family property is normally inalienable either or by will. The houses and farmlands left by a deceased ancestor, become, after his death, the family property for the members of his family.

It is important to point out here that immovable property under the Yoruba law and custom includes the wife or wives. Unlike all other species of immovable property, the wife or wives could only be inherited by the male members of the family. Also, the wives would not be inherited through the making of the will.

The female under the Yoruba native law and custom, is entitled to participate in the sharing of the immovable property left by deceased ancestors.

In *Amusan V. Olawunmi* (2002) 12 NWLR Pt 780, 30 at 53-54 , the court held that under the Yoruba customary law, the property of a Yoruba person who dies intestate devolves on all his surviving children, in equal shares to the exclusion of all other relations. All children, both male and female are entitled to inherit their parents' land.

In a polygamous family, the property of the deceased father becomes that of all the children and wives and it is accordingly divided according to the number of branches (*idi – igi*) or per stripes (*ori – ojori*).

However, where one of the wives died intestate, her property will devolve on her children as family property. If the woman dies intestate and childless, her property will revert to her original family. The wife, under the Yoruba law and custom, cannot inherit the real property of the deceased husband. This is also true of the wife in Igboland. The wives under both settings are regarded as part of the property of the deceased to be inherited. Among the Yorubas where the wife is childless, her rights on the husband's property are based on the death of the husband. However, where she has a child, she will continue to enjoy the property of the husband apportioned to that child.

Among the Igbos, it is only the male children who can inherit the property of their father. In Igboland when a man dies, all his property passes to his eldest son called *Okpala* and where he has more than one wife, the eldest sons of the wives inherit jointly. The eldest son is saddled with the responsibility of managing and administering the estate in trust and for the benefit of the whole family.

If the deceased has no male child, the property left behind will be inherited by the brother of the deceased of the same blood. In the absence of the brother, the property will be inherited by the uncles. Among the Bini of Edo state, the property left behind by the deceased husband is inherited by the eldest surviving male child. He takes over the father's compound known as *igi ogbe*.

In these places, the eldest surviving son inherits the deceased's estate to the exclusion of his brothers and sisters. In order to maintain peace, the estate except the *igi ogbe*, will be held in trust for the purpose of maintaining his brothers and sisters and other dependants.

Under the Idoma native law and custom the brother of the deceased, is the next of kin. He therefore inherits the deceased's property, including his wife and children.

In the Northern part of Nigeria apart from the Islamic law, there is the indigenous native law and custom. Generally, his sons inherit the property of the deceased in the absence of which the brothers will take over. Females are not allowed to inherit the deceased man's property but they can inherit all female movable properties. The male of the family inherits land.

3.6 Slaves of Domestic

Slaves and *arotas* are also regarded under the Yoruba law and custom as immovable property. The word *arotas* is used among the Yoruba in Lagos State to describe the descendant of children of slaves and freemen. The slaves under the Yoruba law and custom are regarded as members of the household.

After 1960 when the Abolition of Slavery Ordinance was passed, the status of slaves viz-a-viz their right in family property changed. Before the Ordinance, any property acquired by the slave accrued to the master because he was also seen as the property of the master. In *Ekpham V Henshaw* 10 NLR 65, the defendant sought to obtain a letter of administration to the estate of one Effiong Okon Attah. The said Effiong Attah was a slave of the household of the defendant who claimed that according to the native law and custom, his property belonged to the family of the defendant and should be administered by the defendant who was a chief and head of the family.

The court held that he was not entitled to the grant. His claim was therefore rejected. The court's decision was based on the Abolition of the Slavery Ordinance as any contrary decision would defeat the intent and purpose of the ordinance.

Note that the decision of the court would have been different if the action was instituted before the passing of the ordinance.

In recent times, the position of the domestic has been gradually improved by the courts and it had been held that where property was allocated to domestics for their occupation, they could partition the property and that is as long as they did not deny the title of their overlord, they would not be liable to forfeiture of their rights of possession.

Apart from the right to reside in their family property, the domestics have as been pointed out, sufficient interest in the family property to

oppose unauthorised sale or disposition of it. That does not give the domestics the right to share with the children of their overlord the monetary compensation paid to the family for the compulsory acquisition of the family property by a statutory corporation.

3.7 Head of the Family

The head of the family under the Yoruba native law and custom is the person entitled to look after and manage family property. The head of the family represents the particular family unit, while the chief is the head of the Yoruba families that make up the chieftaincy family. The head of the family must himself be someone who has interest in the family property. In Yoruba custom after the death of the founder of that family, his eldest son usually known as *Dawodu* becomes the head of the family and assumes the management and control the affairs of the family. After his death his own brothers or sisters follow in order of seniority and become successively the head of the family.

The head of the family must possess some beneficial interest in the property of the family, in consultation with the council of the family, which consists of his brothers and sisters or his immediate children. He does not possess any larger interest in the family property than other members neither is he superior to any other head of the several family branches.

He cannot alienate family property, without consultation with them. The head of the family like any other has no right to alienate any portion of the family property without the consent of the family.

He is a trustee and stands in this position to the other members of the family. He is saddled with the responsibility of managing the property for all the members of the family. He must perform his duties fairly and equitably. Where the head of the family acts or conducts the management of the affairs of the family in the way inconsistent with native law and custom, the remedy of the other members of the family, is to remove and replace him with another person.

The head of the family is the right person to receive and accept on behalf of the family all money paid to or on behalf of the family either in respect of the family property acquired or sold or let out. A sale of the family property without the consent of the head of the family property is void. On the other hand, the sale of family property by the head of the family without the consent of the other members of the family is voidable. He cannot alienate or transfer family property without consent of other members of the family. This is because his interest and rights in family property are not greater or wider than those of the other members of the family.

The head of the family is not accountable to the junior member of the family. In *Martin Laduni Kosoko V Momodu Oteniya Kosoko and others* 13NLR 131 a claim for account against the head of the family was refused. In *Fynn and others V Jane Gardiner* of Cape Coast 14 WACA 260, the native court that originally tried the case had ordered an account against the defendant who was claimed to be the head of the family. WACA set aside the judgment. Foster Sutton Stated:

We indicated during the course of argument that in our opinion that the native court erred in ordering account. It is a well settled principle of native law and custom that junior members of the family cannot call the head of the family for account. Their remedy is to dispose him and replace him with another.

The above rule does not apply to somebody appointed as caretaker to the property of the deceased. In *Mary Atua Nelson V Samuel Curshie Nelson* I WACA 215, the defendant was appointed by the deceased while on his death bed because of his literacy, to look after the interest of his brothers and sisters in the property left behind. The defendant claimed the immunity of the head of family to account at the instance of some of the children of the deceased. The court of Appeal:

Per Michelin J. said:

In my opinion this is not the case of the action by a junior member of the family against the head of the family but it is brought by brothers and sisters of the defendant against him in his position of a caretaker on their behalf not only at the request of the deceased but at the request of the head of the family, to look after their interest in the property of the deceased. He was therefore liable to account to the plaintiff.

The head of the family is the only person entitled to take action or defend action involving family property. The other members of the family are only entitled to sue or defend if the head refused or neglected to do so. In *Akapo V Habeeb Hakeem* (1992) TSCNJ 119 the court held that:

No member of the family without express mandate from the family can institute action in court for and on behalf of the family’.

In *Sufiamu V Animashaun* (2000) 14 NWLR Pt 688 Pg. 650, the court held that every member of a land owning family can file a suit to protect the property of the family from waste and dissipation

3.8 Right in the Immovable Property of the Family

1. Every member has a right to reside in the family house.
2. Every member has a right to be consulted in any dealing with the family property.
3. Every resident member has a right of ingress into and a right of egress from the family house and non-resident members have no such right.
4. No member has any alienable interest in the family property.
5. Males as well as females have equal rights in the family property, particularly in Yoruba land.
6. No one has a right to build his own house on the family property without the consent of the others.
7. Every member has a right to ask for the portion of the property, if his rights are denied him.
8. Every member has a right of entering into the family house for the purpose of attending family meetings and if a member of the family council also for the purpose of viewing the state of repair.
9. The different branches of the family are entitled to be represented by stripes on the family council and to share the proceeds of any alienation of the property in such properties and as such accordance with the native law.
10. The management of the family property and the control of all its affairs are vested in the head of the family.

SELF ASSESSMENT EXERCISE 2

Ayoola V Folawiyo (1942) 8WACA39: will the court recognise a Muslim marriage as a valid marriage in Southern Nigeria? Briefly explain your response.

4.0 CONCLUSION

This study unit would have given you an insight to what family law is all about and the connecting nexus between it and other branches of law.

5.0 SUMMARY

This study unit teaches what family law is and how is it related to other branches of law. The brief explanations given will help you to gain background knowledge of family law.

6.0 TUTOR-MARKED ASSIGNMENT

1. Name the two main divisions of family law.
2. What does the wider definition of the concept of the family include?
3. Can customary marriage be regulated in Nigeria? Discuss briefly.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute*
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UNIT 4 FAMILY PROPERTY AND SOURCES OF FAMILY LAW

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Movable Property

- 3.2 Creation of Family Property
- 3.3 The Determination of Family Property
- 3.4 The Celebration
- 3.5 Legal Effect
- 3.6 The Position of Non-Natives
- 3.7 Islamic Law Marriages
- 3.8 Proof of Customary Law Marriage
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Marriage under customary law may be preceded by betrothal. The rules relating to betrothal differ from that of marriage under English law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state what family property means
- explain the creation of family
- explain the creation of family property
- explain the roles of all individuals in a family.

3.0 MAIN CONTENT

Under customary law some issues to consider under marriage include the following:

Age: there is no generally accepted lower age limit of marriage under customary law in Nigeria. Girls are at times betrothed from birth. At times, claims are later strengthened by regular gifts to the child and the mother. But the evils of child betrothal include slave trading and forced marriages. It could also be an avenue for defiling infant girls. Presently in the Eastern part of Nigeria, the age for betrothal has been laid down to be 16 years. (See Section 3(1): Age of Marriage Law Caps 6 Law of Eastern Nigeria 1963).

Parties: The parties to the betrothal are usually the parents or the guarantors of the spouses to be. But there are cases where the groom may conclude alone, as in the case of a widower or a man taking the second wife).

Consent: Here, it is two fields; that of the parties and that of the parents. Where the parties are capable, customary law requires that they can agree to marry each other. Where either of the spouses is of tender age, the consent of the parent or guardian is necessary for the betrothal. In the case of a man of full age, he may dispose with parental consent. On the other hand, no matter the age of the bride parental consent is mandatory.

The Betrothal: This becomes effective on the agreement of the parties and their families on the payment of the bride price to the bride's family.

Breach: The betrothal may be terminated by the refusal of one party to go through the marriage. This may be effected by the family of either spouse or in the case of adults by one of the parties. Note that there are several probable grounds for a breach. There is no right of action at customary law for breach of executory contract. The main relief is to return the parties to the status quo ante i.e. situation existing before something else occurred. Hence there is no right of the action of repudiation of breach to marriage. In most areas, a man is allowed to recover the bride price and betrothal of gift when the betrothal comes to an end. Note that only substantial gifts in contemplation of marriage are recoverable.

3.1 Movable Property

Movable property is that property which has been so used and regarded unequivocally as property belonging to the whole family.

Unlike the immovable family property, the only right of the members of the family in the movable property is no more than their right of watching the property being properly used and not alienated. The physical use and the enjoyment of movable family property go to the head of the family. Any side of the movable property without the consent of the other members of the family is usually accompanied by serious consequences.

Movable family property may consist either of the whole or portions of the personal paraphernalia of an *oba*, the head of the family or of portions of the articles of household adornment e.g. the crown in the case of a traditional adornment i.e. the crown in the case of a traditional ruler, the sword and the staff of office of the throne and the household furniture, the calabashes employed for oracular consultation, the royalty due from immovable property etc.

3.2 Creation of Family Property

Family property can be created either by act of parties or by operation of the law.

In modern times, the commonest way of creating family property by act of parties is but a declaration to that effect in a will. In creating a family property by will, it is not necessary that the word “family” or “family house” be used in order to create a testamentary disposition in a family property. It is sufficient that the words should convey impressions that the testator intended to keep the property in the family in perpetuity and that the members of the family in the sense of lineal or even collateral decedence should enjoy the same.

In *Frank Akinhanmi Coker V. George Baptist Coker and Ors* 14NLR 83, the testator Edward Forster an Egba man created the following device:

“I live and bequeath my present dwelling house to the whole of my family or blood relatives and their children’s children throughout”.

The plaintiff in this case contended that the device was void because

- a. The objects were not certain
- b. The device was not in accordance with the rule of perpetuity.

The court held that the device validity created a family property of the house in question. In *Sanni Sule V Badun Ottun I* NLR1 60 1911, the testator devised his property to be held by the guarantees as both joint tenants and tenants in common and to be kept as a common dwelling house and not to be sold without the written consent of all the beneficiaries.

The court held that by providing for the sale or alienation of the property or the written consent of all the beneficiaries, the testator had divested the property of the characteristics of a family property.

In creating the family property, the possessor interest must vest in the present and not in the future. In *Akinyemi V. Francis Kehinde* 18NLR 127, the testator Thomas David Shaw devised as follows:

I further hereby device and direct that my lawful son, Adeniyi will immediately after my demise take possession of my residential premises of No 26 Kosoko Street, Lagos and establish himself therein without let or hindrance or molestation from or by sister Mrs. Emily Williams or from or by any of the member of the family. The house

shall remain for his absolute use and benefit but in no case should it be sold or alienated....

In the event of the demise of the said Adeniyi, the said premises to be reckoned as family property to perpetuate my memory

The court decided that the absolute interest was a ground for the life interest in the family property which could also be created through the operation of law. The court in *Ogunmefun v Ogunmefun* 10 NLR 82 held that under the Yoruba native law and custom, where the deceased died intestate leaving behind issues, the property will vest in the children as family property and no individual member has the right to alienate the property without the consent of other members. The court in *Adeseye v. Taiwo* (1956) 1 FSC 84 held that the property of the deceased person who had children surviving went to his children and not to his uncles aunts or cousins.

Note that before the property is regarded as a family property the founder of the family must be solely entitled to the property for an absolute estate.

Another method of creating family property is the system where land is granted to a tenant for and on behalf of the family. The land is granted to the original tenant under a customary tenure which gives him no power of alienation either *inter vivos* or by will.

3.3 The Determination of Family Property

Family property can be determined by:

- a. Absolute alienation of the subject matter
- b. Partition and
- c. The destruction of the whole property.

Alienation of family property in absolute terms is a recent development. The system was unknown under the native law and custom. The system developed as a result of modern way of life and Western civilisation. Absolute alienation of family property could occur in two ways:

- a) A sale of the property.
- b) A mortgage of the property without the intention of redeeming or reclaiming it.

Under native law and custom, no one member of the family has any disposable or attached interest in the property. It follows therefore that in order to determine entirely family property by sale, the entire interest

and absolute title must be disposed of; for it is not possible to sell one or the other of the interest. Such a sale could only be by the:

- a. Consent of the members of the family; or
- b. Order of the court

It is not compulsory that every member of the family should be consulted before a sale is effected. What is required is that every branch of the family be consulted and such consent obtained. Where the sale of the family property is unjustified such a sale will be void or voidable according to the description of the property.

3.4 The Celebration

There are essential and formal requirements for the celebration of a valid customary law marriage in Nigeria. Customary law varies from one locality to other but the general principles are similar.

1. **Capacity:** Parties must pass the capacity under the law to marry each other. And this will be considered under age, for instance.
2. **Age:** Most customary law systems in Nigeria do not prescribe any age of solemnisation for marriage. While child betrothal is rampant in some areas marriage does not take place until the age of puberty is attained. In some parts of the country, the minimum age of customary marriage is fixed. In the East it is 16 years. In the case of *Emeakuana V Umeokiako*, suit number AA/IA/76 High Court of Awka 15/10/76, the age of the wife in the case at the time of the celebrating marriage was put at 15 years. The court held that the marriage was void having contravened S.3(1) of the Age of Marriage Law 19. Among the Ibibio, it is 14, the Idoma, 12; and for the Tiv it is the puberty age while in Borgue land it is 13.
3. **Consent:** This is expressly demanded and obtained where the parties are capable. In *Oransaye V. Osanweyi* 1972 10NSC, the Supreme Court held that the consent of the bride was the condition precedent to a marriage under Benin customary law. In Biu, Idoma, Tiv and Borgu areas, consent of the girl is an important element in the customary marriage celebration. Parental consent is also necessary in the case of girl since without this, the bride price cannot be paid. The requirement of parental consent exists in the old Lagos, Ogun, Oyo, Ondo and Bendel states of Nigeria where the Marriage, Divorce and Custody of Children Adoptive Bye law of 1958 is in force.

4. **Statutory Prohibition:** A person who is a party to a subsisting marriage (statutory) cannot contract a valid customary law marriage. See *Onwudinjo V Onwudinjo*
5. **Prohibited Degree of Affinity:** The general rule is that marriage is forbidden between persons who are related by blood no matter how remote the relationship is. With regards to affinity, customary law, in many parts prohibits a man from marrying anyone with whom he is related by marriage but on the death of a man, the adult sons may marry the wives excluding their mother.
6. **Status Bar:** This is when customary law in some areas prohibits marriage between free citizens and members of some castes e.g. slaves (*osu* in Igbo land). Please note that the caste system has been abolished by law but people's attitude has not changed. See S. 42(2) of the Constitution
7. **Bride Price:** This is an essential element in the validity of a marriage. In Yoruba, it is known as *idana*. It is a gift of payment made to the parent or guardian of the bride on account of the marriage of the bride. The form depends on the customary law of each place. Historically, it was in form of labour by the suitor but has today been replaced by money payment. There is no uniformity of the quantum of the amount. The various forms of the law of the state have placed the bar in the amount to be paid. There is no definite time for the payment but part payment must be made before the celebration. The right person to be paid is the father but in his absence the male head of the family receives the price. This is more common in patrilineal societies. Can bride price be waived? This is a necessary issue since families have accepted Western norms where part is waived there is no problem but what of where the whole is waived?

In the case of *Nick V Nick* Unreported suit no Co/K/84 of 13 June, 1985 it was observed that payment of bride price is an essential requirement of marriage under customary law. In most communities in Nigeria, native law forbids the waiver of any ingredient of marriage. A waiver of it will render the marriage void.

Celebration of the Marriage Proper

The marriage is contracted after the issue of capacity and bride price have been settle. Usually there is no marriage until the bride is led to the groom's house or his parents' house and is handed over to the representative of the bride groom's family. There is the judicial decision

to the effect that a valid Yoruba or Igbo marriage is not contracted until the formal handover of the bride takes place. See *Beckley V. Abiodun* 1943 17NLR 59, *Nkediowwe V. Okafor* 1966 – 1967 10 ENLR 78. In the earlier case of *Osanmu V. Osanmuoye*, the Supreme Court held that under the Benin customary law, there must be co-habitation as well as payment of bride price to constitute a valid customary law marriage.

3.5 Legal Effect

Spouses are entitled to each other's consortium. This is one of the benefits that a spouse is entitled to receive from companionship. Under customary law, spouses must co-habit and submit to the other's reasonable sexual demands. Also the rights of spouses to mutual protection are recognised, therefore each is entitled to the assistance of the other in the event of attack. Occasion arises in marriage where a third party interferes with the marriage as to where adultery is committed or a runaway wife is harboured or enticed to run away. In some parts of Nigeria, customary law confers on the husband the right of action for damages against a man who commits adultery against his wife but there must be a valid customary law marriage. Where the man commits adultery, the wife has no right of action but can make it a ground of divorce. See the case of *Chawere V. Aihenu and Johnson* 1935 12NLR 4 where the plaintiff seduced the wife from the husband and refunded the bride price. Later the wife left the plaintiff to live with the second upon a claim that the two defendants were married. The court held that the mere fact of the two defendants living together did not amount to marriage in customary law. Also customary law in some areas allows the man the right of action for the recovery of a wife. See *Erhobare V Otebrise* (1971) UTLR 33, *Solomon Vs Chukwu Alu* 1972 ESCLR 619; *Oku V Oku* (1979) I FNR 119. All these cases establish that the other spouse has a right of action for the loss of services of the enticed spouse.

3.6 The Position of Non-Natives

By virtue of the various High Court laws, the courts are directed to apply customary law in any civil matter where the parties are natives of Nigeria or persons of Nigerian descent. In cases between natives and non-natives, English law or any other law is to be applied unless substantial injustice will result therefrom. The two cases where this came for consideration were *Savage V Macfoy* (1901) Renna's Gold Coast report 504, *Fonseca V Passman* (1958), WRLR..... Pg.

In both cases the court ruled that customary law was inapplicable to the estate of the deceased foreigner. Thus, a person who is not subject to customary law may not validly contract a customary law marriage.

However *Savage V Macfoy* is no longer good law in the North since customary law applies to any person one of whose parents is a member of any tribe indigenous to some part of Africa.

3.7 Islamic Law Marriages

This is very much similar in feature to customary law marriage. The principal requirements are:

1. **Consent:** As in other customary law systems plus the fact that under the Maliki School, a father may conclude marriage on behalf of his infant sons and virgin daughters. But the child may repudiate the marriage on attainment of puberty.
2. **Saduwat or Doaw:** This represents the marriage payment or bride price received by the parent of the bride from the suitor. Sharia prescribes the minimum and not the maximum.
3. **Prohibited Degree:** Apart from prohibition with regards to affinity and consanguinity, a Moslem man can only marry a believer in God and (non-pagan) and a Moslem woman can only marry a Moslem man.
4. **Ceremony:** This must be celebrated by a Mallam in the presence of at least two upright Moslem witnesses. Due to the extravagance and ostentation that previously attended Moslem marriage, the Sokoto State Marriage Expenses Regulation Law 1981 was enacted. It provides *inter alia* that no gift shall be made on behalf of the bride. No praise singers to accompany the bride, nor the groom home and no traditional reception during a marriage in the name of the couple.

3.8 Proof of Customary Law Marriage

Since customary marriage is an institution which credits status it must be strictly proved in judicial proceedings. This is done by:

- a. Leading evidence as to the customary law marriage of the locality.
- b. Satisfactorily showing that the essentials are complied with thus proving a subsisting marriage. The best evidence is that of persons who witnessed or performed roles in the marriage ceremonies. See *Lawal v Younan* (1959) WNLR 155: (1959) 1 All NLR 245. Presently, efforts are being made in more parts of the country to register customary law marriages. Have a look at

Registration of Marriages Adoptive Bye Laws Orders (1956) applicable in old Western States, Bendel and Lagos under the law, where it is provided that the husband should do the registration within the month.

4.0 CONCLUSION

This unit has examined family property, how it is created, the determination of family property and the incidence of celebration of marriages and the bars to parties who want to contract a marriage.

5.0 SUMMARY

This unit has taught:

- Contract of marriage
- Creation of family property
- The head of the family
- Moveable and immovable property
- Marriage as a contract

6.0 TUTOR-MARKED ASSIGNMENT

1. Identify the ways family properties are created under native law and custom.
2. Define the term “head of family”
3. Discuss marriage as a contract.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute* Lagos: Mathouse Publishers.

Onokah, M. C. (2003). *Family Law n Nigeria*. Enugu: Spectrum Publishers.

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Matrimonia Causes Acts and Rules.

UNIT 5 COURTS OF RECORD

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Courts of Record
 - 3.1.1 Inferior Court of Record
 - 3.1.2 Superior Court of Record
 - 3.2 Customary and Area Courts

- 3.3 Sharia Court of Appeal
- 3.4 Jurisdiction
- 3.5 Customary Court of Appeal
- 3.6 Magistrate and District Courts
- 3.7 Jurisdiction
- 4.0 Conclusion
- 5.0 Summary
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1.0 INTRODUCTION

Every court in this country with the exception of some customary or native courts is a court of record. This means that the judicial acts of the courts as well as their proceedings must be recorded on parchment of an authentic and perpetual memorial of testimony.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the court system in Nigeria
- discuss the powers and functions of the various courts
- explain the jurisdiction of all the courts in Nigeria
- show the limitation of all the courts.

3.0 MAIN CONTENT

3.1 Courts of Record

3.1.1 The Inferior Courts of Record

The inferior courts of record include the Magistrate Court, the District Court, the Justices of Peace, the Juvenile Court, the Coroner's Court and Arbitration Courts. The use of "inferior" with reference to these courts is not pejorative. It is used to describe the court's exercise of a comparatively limited jurisdiction not only with regard to the type of

cases they can handle, but also to the scope of punishment they can impose.

“Inferior” means that there exists a distinction between their powers as against those of superior courts to punish for contempt of court. While a superior court can punish for contempt of its authority whether committed in or out of court, an inferior court can only punish for contempt committed in the face of the court and not outside it.

3.1.2 Superior Courts of Record

Superior courts of record are courts with jurisdiction usually regarded as unlimited. The word, unlimited, should not be taken literally. Unlimited refers mainly to the powers of superior courts to impose the maximum punishment conceivable in civil or criminal cases which inferior courts cannot do. That apart, their jurisdiction over matters are wide and diverse, but not unlimited since a law may be enacted, especially in a military regime to curtail the jurisdiction of the courts. What therefore, is a superior or an inferior court of record is not a natural phenomenon, but a matter of legislative expediency.

3.2 Customary and Area Courts

Customary and Area Courts are essentially established to administer the local or customary law of a people, in so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force. They do not have powers to enforce the provisions of the common law and so cannot entertain suits founded for example on torts.

These courts are the ones nearer to the masses. They and the magistrate courts are often referred to as the beasts of burden in the Nigerian judicial system. In the former Eastern Region- Customary Courts came into being by the Customary Courts Law of 1956. A similar law in the following year created the courts in Western Nigeria. The states subsequently created out of these regions have inherited or adopted these laws. In some cases the laws were repealed and re-enacted. In the former Northern Region, Area Courts came into being as grassroots courts in 1967. The states thus far carved out of the region have each enacted a separate Area Courts Edict, though all the edicts are in *pari materia* both in content and wordings.

Where established, Customary and Area Courts are usually created in grades, such as Grades A, B, C, and D. The lower grades are generally constituted by a President and a number of lay members. Two or three members may constitute a quorum for the purpose of hearing cases. In

Lagos State, a person will not be appointed a member or president of a customary court unless:

- a) He is literate in English language;
- b) He possesses at least the General Certificate of Education Ordinary level or its equivalent as well as suitable experience;
- c) He is a native of the area of jurisdiction of the customary court; and
- d) In case of the president of a customary court, Grade A, he has attained the age of thirty-five years.

In some other states, education is relegated to the background. What count are experience and sound knowledge of the local traditions and customary laws of the people of the district of the court.

The higher grades may be constituted with legal practitioners versed in court procedures and the law of evidence as in all Grade A Customary Courts in Oyo, Ogun and Ondo States. They exercise both civil and criminal jurisdiction. In civil matters, this includes jurisdiction over:

- a) matrimonial causes and other matters between persons married under customary law or arising from or connected with a union contracted under customary law;
- b) suits relating to the guardianship and custody of children under customary law;
- c) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law provided the value of the estate does not exceed a limit prescribed by the enabling law;
- d) cases of debt, demand or damages under customary law where the amount does not exceed a certain value; and
- e) other cases under customary law including customary land law matters;

In criminal jurisdiction, matters often assigned to Customary and Area courts include jurisdiction over:

- a) offences against the provision of any enactment which expressly confers jurisdiction on the court;
- b) offences against rules and bye-laws made by a local government council or having effect as if so made, under the provisions of any enactment in force in its area of jurisdiction; and
- c) contempt of court committed in the face of the court.

The term of imprisonment or amount of fine the court can impose will be as defined and specified in its enabling law. Persons subject to the jurisdiction of a customary or area court are defined differently by the

different laws applicable in the states. In the states carved out of the old Western Region, customary courts have jurisdiction over all Nigerians regardless of their state or ethnic origin. In Cross River State, the courts have a further jurisdiction to try “non-Nigerians who individually or as members of a class, have been declared subject to the court’s jurisdiction or have at any time instituted proceedings in a customary court or who voluntarily submit to the court’s jurisdiction. In Anambra State, the courts have jurisdiction over all persons and classes of persons within territorial limits of its jurisdiction.

The practice and procedure of customary and area courts are prescribed by rules made under the enabling laws. Generally, powers are conferred on the State Chief Judge to make rules for the courts as regards both their original jurisdiction and in respect of appeals from the courts.

Appeals lie from the decisions of the Customary Courts to the Magistrate Courts and thereafter to the High Court. Appeals lie from the Area Courts to an Upper Area Court and thereafter to the High Court. An Upper Area Court is responsible for appeals emanating from a number of Area Courts within its locality.

3.3 Sharia Court of Appeal

The Sharia courts in our judicial system have a long history. The defunct native courts, Alkali Courts, Khadi courts and Area Courts are vagaries of Sharia courts. The need and indeed necessity to create an appellate court over these courts cannot be impinged.

Section 275(1) of the 1999 Constitution provides that there shall be for any state that requires it, a Sharia Court of Appeal for that State. The origin of this law can be traced to section 4 of Sharia Court of Appeal Law 1960 of the former Northern region which charged the court with appellate jurisdiction over matters of Islamic personal law on appeal from the Upper Area Courts. Thus, while the provision of section 275(1) applies to “any state” that requires it only the states carved out of the former Northern Region, do in fact have Sharia Courts of Appeal.

The Sharia Court of Appeal of a state consists of a Grand Khadi and such number of khadis as may be prescribed by the state legislature. A person is not qualified to hold the office of a Khadi unless:

- a) He is a legal practitioner and has been so qualified for a period of not less than ten years and has obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council; or

- b) He has attended and has obtained a recognised qualification in Islamic personal law from an institution approved by the National Judicial Council and has been so qualified for a period of not less than 10 years; and
- i) He either has considerable experience in the practice of Islamic personal law, or
- ii) He is a distinguished scholar of Islamic law.

The court is properly constituted if it consists of at least three kadis sitting together.

3.4 Jurisdiction

The Sharia Court of Appeal has no original jurisdiction. It entertains appeals only, from decisions or orders of Upper Area Courts. The court is competent to hear and determine appeals in the following areas:

- a) Any question of Islamic personal law regarding a marriage concluded in accordance with that law including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant.
- b) Where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship or the guardianship of an infant;
- c) Any question of Islamic personal law regarding a gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
- d) Any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or guardianship of a Muslim who is physically or mentally infirm; or
- e) Where all the parties to the proceedings (whether or not they are Muslims) have requested the court that heard the case in the first instance, to determine that case in accordance with Islamic personal law, any other question.

On any of the foregoing matters, the relevant state legislature may confer jurisdiction on the Sharia Court of Appeal with respect to civil proceedings only. Appeals lie directly from the Court to the Supreme Court:

- a) On any question involving the interpretation of the Constitution;

- b) On any question as to whether any of the constitutional human rights guarantees have been violated; or
- c) In such other cases as may be prescribed by any law in force in the state concerned.

In all other matters before the court, its decision is final.

3.5 Customary Court of Appeal

Section 280(1) of the 1999 Constitution provides that there shall be for any state that requires it, a Customary Court of Appeal.

The court shall consist of a President and such number of judges as may be prescribed by the state legislature. Whilst the qualification of the President of the court is prescribed by the Constitution, the qualifications of other members are not so stated. It is presumed that the State law establishing the court for any particular State will so prescribe. The President must be a qualified legal practitioner of not less than ten years standing and in the opinion of the National Judicial Council; he must also have considerable experience in the practice of customary law. Three judges sitting together for the purpose of exercising its jurisdiction properly constitute the court. The court is to exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law from decisions of the Customary Courts.

3.6 Magistrate and District Courts

All the states in the Federation have a magisterial court system. Magistrate Courts are created by state legislation, for example, the Magistrate's Courts Law of Lagos State. A single magistrate sitting alone constitutes the court. Generally, a person is not eligible for appointment as a magistrate unless he is a qualified legal practitioner duly called to the Nigerian Bar and must be of not less than two years standing. In some states, lay magistrates of lesser qualification are occasionally appointed. In all the states, there are classes or grades of magistrates. Notable grades are: (a) Chief Magistrate (b) Senior Magistrate grade II, (c) Magistrate and I grades I, II and III.

Classes of Magistrate Court are not uniform in all the states. While some states in the South have six grades, the Northern states have four. Rivers State has three grades while Lagos has five grades.

For an efficient administration of the magistrate court system in a state, power is conferred on the Chief Judge of the state to divide the state into magisterial districts. One or more magistrates may be appointed to sit in a district. Even though a magistrate is assigned to and would normally

sit in one magisterial district at a time, every magistrate has jurisdiction throughout the state.

3.7 Jurisdiction

Magistrates in the Southern states exercise both civil and criminal jurisdictions. In the North they exercise criminal jurisdiction only and the District Courts exercise the equivalent of that civil jurisdiction which magistrates handle in the South.

The civil and criminal jurisdiction of magistrates are restricted or limited by three elements. Firstly, it is defined and limited geographically within the magisterial district, although a magistrate has jurisdiction only within a magisterial district.

Secondly, the jurisdiction of the court is defined by the grade of magistrate presiding. Whereas a Chief Magistrate can entertain a claim of a value of up to ₦250,000, a Magistrate Grade II can only exercise jurisdiction if the claim is below ₦25,000. The variation of the monetary value of the court's jurisdiction is subject to review from time to time by the state Chief Judge.

Finally, the court's jurisdiction is defined by the subject matter. Magistrates in the southern states may generally exercise civil jurisdiction in the following matters:

- a) Personal actions arising from contract, tort or both;
- b) Suits between landlords and tenants for possession of any lands or houses claimed under an agreement or refused to be delivered up;
- c) Actions for the recovery of any penalty, rates, expenses, contribution or other like demand which is recoverable by any written law, provided the demand is not by any written law expressly made recoverable only in some other court;
- d) Appointment of guardians *ad litem* and the making of orders and giving of directions relating thereto;
- e) The granting of injunction or other ancillary orders to stay action or alienation or for the detention or preservation of any property the subject of the suit or to restrain breaches of contract or tort; and
- f) Appeals from the decisions of customary courts.

The ability of each grade of magistrate to grant relief in any of the above stated cases would depend on the monetary ceiling prescribed in the enabling law.

As a general rule, a magistrate has no original jurisdiction in any civil case which raises any issue as to the title to land or to any interest in land or which raises any issue as to the validity of any devise, bequest or limitation under any will or settlement. In the Northern states, since the repeal of the Magistrates Courts Law of Northern Nigeria 1955, and its replacement by the Criminal Procedure Code Law, no magistrate has jurisdiction to hear civil cases. All civil cases are vested in the District Courts, which alone can try and determine them.

4.0 CONCLUSION

Unit 5 has dealt with the courts of record in Nigeria. It is important that we know the powers of each court in respect to Matrimonia Causes Matters in Nigeria.

5.0 SUMMARY

This unit has examined the following:

- Customary Courts
- Area Courts
- Sharia Courts
- Magistrate Courts
- District Courts
- Courts of Appeal
- Customary Courts of Appeal

6.0 TUTOR-MARKED ASSIGNMENT

Identify the jurisdiction of the High Court in Matrimonial Causes Matters.

7.0 REFERENCES/FURTHER READING

- Sagay, I. (1999). *Nigerian Family Law, Cases Principles and Statute*
Lagos: Mathouse Publishers.
- Onokah, M. C. (2003). *Family Law n Nigeria*. Enugu: Spectrum Publishers.
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Matrimonia Causes Acts and Rules.

UNIT 6 THE NIGERIAN COURT SYSTEM

CONTENTS

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 - 3.3 State High Courts
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 - 3.5 Appellate Jurisdiction
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- 3.10 General Powers of the Court of Appeal
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1.0 INTRODUCTION

Criminal Jurisdiction

In criminal matters, Magistrate Courts are courts of summary jurisdiction and are empowered to deal with criminal matters summarily. However, for the purpose of defining their criminal jurisdiction, triable offences are divided into two classes – indictable and non-indictable offences.

An indictable offence is one which on conviction, may be punished by a term of imprisonment exceeding two years or which may attract a fine exceeding N400, and not being an offence declared by the law creating it to be punishable on summary conviction. All other offences are non-indictable. There is no such classification in the Northern states, as jurisdiction there is expressly dependent on the Criminal Procedure Code applicable in the Northern States.

All magistrates in the Southern states have jurisdiction to summarily try all non-indictable offences. With regard to indictable offences, magistrates can only try indictable offences summarily, other than capital offences, subject to the provisions of Section 304 of the Criminal Procedure Law. The section provides that where an adult is charged with an indictable offence other than a capital offence, a Magistrate may deal summarily with the case provided the accused is informed of his right to elect trial by the High Court and has given his consent to summary trial, before the Magistrate shall proceed to take his plea and the summary trial. If the Magistrate should fail to inform the accused of his right to elect trial by the High Court, the summary trial shall be null and void *ab initio*.

Secondly, before proceeding to try summarily any indictable offence, the magistrate must secure the consent of the prosecution where a law officer conducts it. Again the Magistrate should satisfy himself that having regard to the nature of the offence and the antecedents of the accused, he has powers to inflict punishment equal to the offence

charged. Where these conditions exist, a Magistrate may proceed to try an indictable offence summarily.

Subject to section 304 therefore, a Magistrate can entertain all indictable offences, where the maximum punishment prescribed for the offence is within the power of punishment of the Magistrate.

Thus for the purpose of Section 304, magistrates generally conduct preliminary investigations. This involves the sifting of evidence from the prosecution and its witnesses with a view to determining whether there is a *prima facie* triable case against the accused and whether there is evidence with which he could be committed for trial by the High Court and the records of the investigation shall be transmitted by the Magistrate to the High Court. On the other hand, where a *prima facie* case is not made out, the Magistrate must discharge the accused forthwith, which discharge will not preclude a fresh charge when supported by fresh implicating evidence. The procedure is useful as it clarifies the issues for trial and ensures that the rather elaborate procedure of the High Court is not set in motion unless it is strictly necessary. In view of the attendant delay and expenses, preliminary investigation has been abolished in many states of the Federation.

Subject to jurisdictional limits, every magistrate in every cause or matter before him has power to grant conditionally or absolutely, all such remedies as any of the parties may appear to be entitled to in respect of any legal or equitable claim brought before the court. The court shall endeavour, as far as possible to completely and finally determine all the issues and matters in controversy between the parties and avoid multiplicity of actions. The courts are further empowered to observe and enforce the observance of every customary law, which is applicable, not being repugnant to natural justice, equity and good conscience not incompatible either directly or indirectly or by implication with any law for the time being in force in the state.

The practice and procedure of Magistrate Courts in its civil jurisdiction, is regulated by the rules of court made by the Chief Judge under powers derived from the Magistrate Court Law. In the exercise of its criminal jurisdiction, the provisions of the Criminal Code Law regulate the courts.

3.1 Appeals from Magistrate Courts

Generally, appeals lie from the Magistrate Courts to the High Courts of each state. Appeal in most cases is as of right. The High Court maintains a supervisory jurisdiction in terms of administration and appeals over the Magistrate Courts.

3.2 District Courts

The civil jurisdiction exercised by Magistrate Courts in the Southern states is exercised by District Courts in the North. The Criminal Procedure Code Law transferred this jurisdiction from the former Magistrate Courts to the District Courts which were established under the District Courts Law of Northern Region, No.15 of 1960. This law has been adapted by the states carved out of the region. A single judge sitting alone constitutes a District Court. The judges are for all purposes magistrates sitting in another capacity. There are grades of District Courts like Magistrate Courts. These consist of Senior District Judges and District Judges grades I, II and III. The jurisdiction of the District Court is in many respects in *pari materia* with the civil jurisdiction of Magistrate Courts as discussed earlier. Appeals lie from their decisions to the High Court.

3.3 State High Courts

Section 6 of the 1999 Constitution, whilst vesting the judicial powers of the Federation in the courts, includes the High Court. Section 270 specially created a High Court for each State of the Federation. This was only the continuation of a tradition, as the previous High Courts were creatures of their respective regional constitutions.

By section 270(2) of the Constitution, the High Court of a state shall consist of a Chief Judge and such number of judges as may be prescribed by the state legislature. A judge sitting alone thus constitutes the court. Each state is divided into judicial division to entertain cases and appeals from within the division. Though a judge has jurisdiction throughout the state, he is expected to preside in a judicial division at a time except where he is re-deployed or assigned to visit some other divisions within the state. It is interesting to note that even though the High Court consists of several judges, it is a homogeneous entity. This means that each judge presides at a different but equal part of the High Court in hearing and determining cases. The judges including the Chief Judge have equal powers in the exercise of their jurisdiction. The Chief Judge as the administrative head of the state judiciary can be regarded as *primus inter pares*. It is because of a convenient discharge of justice that the High Court is divided into divisions.

The rules and procedure for creating a judicial division are usually not based on any legislative formula. However, certain factors like population of the area, the nature and number of cases therefrom, the distance between two judicial divisions, and sometimes political expediency may determine the creation of a judicial division. The Chief

Judge as the head of the judiciary has powers to post and transfer judges from one division to another. Depending on the volume of cases in a particular division, more than one judge may be posted there to hear and determine cases. Where this happens, the most senior of the judges is known as the administrative judge. Sometimes within a judicial division, the judges may go on circuit to hear cases in other towns other than the headquarters where the court is situated. This is usually so where the particular division is rather vast comprising a number of towns in one or more local government areas that are far from each other but do not qualify for a judicial division.

Under the 1999 Constitution as amended, S.271 (1) provides for the appointment of the State Chief Judge by the Governor on the recommendation of the National Judicial Council subject to the confirmation of such appointment by a simple majority of the House of Assembly. Section 271(2) provides for the appointment of any judge of a State High Court by the Governor acting on the recommendation of the National Judicial Council.

High Courts are courts of unlimited jurisdiction with respect to the monetary value of the subject matter of a case. They have plenary powers. In effect, they are courts of law and equity concurrently in addition to state and federal enactments applicable in the state. The High Court also observes and enforces the observance of local customary laws in so far as they are neither repugnant to natural justice, equity and good conscience nor incompatible with any written law in force in the State.

The High Courts exercise both original and appellate jurisdiction over criminal and civil causes and matters.

3.4 Original Jurisdiction

The High Court has unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

These powers are quite generic, particularly when it is understood that the courts are vested with both common law and equitable jurisdiction and can thus grant equitable remedies. The unlimited jurisdiction as conferred by the Constitution can only be limited, restricted or whittled down by a law superior or perhaps equal to the Constitution.

The court also has original jurisdiction to entertain any application to redress any alleged violation of the fundamental human rights guaranteed by the Constitution, and also to hear and determine election petitions relating to the validity of the election of a person to any office or to the membership of any Legislative House.

Subject to the applicability of customary laws of intestacy, the jurisdiction of the High Court in probate causes is exercisable in conformity with the law and practice for the time being in force in England.

The practice and procedure of the State High Courts are governed by the Rules of Practice and Procedure made under the authority of the respective state Chief Judge as may be conferred by the State Legislature. In the absence of the rules or where there is a lacuna, reference is made to the practice and procedure of the High Court in England.

3.5 Appellate Jurisdiction

Each State High Court receives and determines appeals from Magistrate Courts, District Courts and some Customary or Area Courts within its division. Appeal may lie as of right or by leave of the High Court. Appeals lie as of right from the above-mentioned subordinate courts;

- a) Where in a criminal case, an accused has been acquitted or an order of dismissal made by a magistrate, or
- b) Where a person has been convicted for an offence and the magistrate had failed to impose a prescribed sentence or order;
- c) Where in a civil matter, the matter in dispute or the claim, right or property involved in the appeal is of the value of twenty naira or more;
- d) Where the appeal centers around questions of law alone;
- e) On any decision on whether or not the Constitutional guarantees of human rights have been violated;
- f) Any decision involving the interpretation of the Constitution;
- g) Any decision in which a person has been sentenced to death;
- h) Appeals against any decisions of a subordinate court sitting at first instance, where no appeal lies as of right to any other court;
- i) Appeals in such other cases as may be specified by any law in force in the state.

Generally, any subordinate court faced with a substantial question of law in the course of interpreting the Constitution may, and shall if any party to the proceedings so requests, refer it to the High Court having jurisdiction.

In the exercise of its appellate jurisdiction, two judges constitute the High Court in each Northern State. If the appeal is from an area court, three judges including a judge of the Sharia Court of Appeal constitute the court. With regard to the former, appeals are decided by votes. But where there is a tie of votes, the judgment of the lower court will be upheld if the decision of any of the judges supports it. Where this fails, the case will be re-heard by a different panel of odd number of judges.

In the Southern states, a single judge constitutes the High Court sitting in its appellate jurisdiction. In Lagos and Rivers States, three and two or three judges respectively in any particular case may constitute the High Court where the Chief Judge so directs. Other State High Courts sitting on appeal may, if the law so permits be constituted by more than one judge.

3.6 Supervisory Jurisdiction of High Courts

The High Court is vested with powers to supervise the processes of the entire court system within its area of administration. This supervisory jurisdiction of the High Court can be achieved through the instrumentality of appeals, transfer of cases from one court to another, the use of the prerogative writs or cases stated. This supervisory role is employed over inferior courts.

1. Prerogative Writs

These have been described as writs which are issued from the superior courts for the purpose of preventing inferior courts, or officials, from exceeding the limits of their legitimate sphere of action, or compelling them to exercise their functions in accordance with the law. The writs include *inter alia*, mandamus, prohibition, *certiorari* and *habeas corpus*. Traditionally, these writs were issued by Her Majesty's prerogative in England in the quest to secure justice within the confines of legal forms and procedures. The prerogative nature of the writs has since been abolished since Nigeria became a Republic. The courts however, have statutory powers to issue orders of like effect.

a) Mandamus

Under this writ, an inferior court which refuses or neglects to exercise the jurisdiction conferred on it by law may be compelled to do so by the High Court. It is also used to compel somebody or any authority vested with legal or public duty to perform that duty. The writ of mandamus can only succeed if the duty is imperative and not discretionary or is

only exercisable when the person or authority thinks expedient. A writ of mandamus is of most extensive remedial measure which is in a form of a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their responsibility which is in the nature of a public duty. Its purpose is to supply the need of justice where there is a specific legal right but no specific legal remedy for enforcing that right. It may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. For instance, in *R v. Thomas*, there was an appeal in the matter in question, yet mandamus was granted as being in the circumstances a more satisfactory and effectual remedy. For an order of mandamus to issue, there must have been a demand on the respondent to perform a public duty and a refusal to perform the same.

b) Prohibition

Prohibition is defined as an order issuing from the High Court of Justice and directed to an inferior court which forbids that court to continue proceedings therein in excess to its jurisdiction or in contravention to the laws of the land. Prohibition lies not only for the excess or absence of jurisdiction but also for a departure from the rules of natural justice, but not against a wrong decision on the merits of the proceedings best remedied by the right of appeal. Prohibition does not lie where a person or authority has completed his or its assignment and has nothing more to do.

c) Certiorari

Where no action as per writ of prohibition is taken to stop an inferior court from trying the case until it has given decision thereon, the order of certiorari may be used to remove the decision to the High Court for the purpose of its being quashed. At common law, it is issued by a superior court to an inferior court compelling the inferior court to submit its records of proceedings for examination whether there have been any irregularities. It lies therefore to any person, or authority performing judicial or quasi-judicial functions to compel him or it to make available the records of his or its decision before a High court for scrutiny. It is designed to check the excesses and arbitrary decisions of inferior courts and tribunals.

The question whether or not an order of certiorari will issue does not depend on whether the errors complained of are errors of law or facts. Such errors must disclose excess of jurisdiction or errors in or on the face of the records of the inferior court or tribunal. The decision will be quashed if it is given in excess of jurisdiction or disregard to the rule of law or violation to the principles of natural justice. In the case of *Ex*

Parte Adebo, it was held that certiorari is not confined to determinations affecting rights in the strict sense but extends to any determination which affects any legally recognised interest or activity, whether it exist, or is carried out, as a right, privilege or liberty, or under an immunity. The issue of the order is based on the assumption that when the legislature confers a power on an authority to make a determination affecting an individual in his property or person, it intends that the power shall be exercised judicially in accordance with the rules of natural justice that the individual affected must be given an adequate opportunity to be heard. Notwithstanding express words taking away certiorari, the court will issue it for manifest defect of jurisdiction in the authority or tribunal, which made the order under review.

d) Habeas Corpus

Habeas corpus ad subjiciendum, otherwise simply known as *habeas corpus* is a prerogative process for securing the liberty of a citizen by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody. Habeas corpus will not normally be issued to release a person serving a term of imprisonment imposed on him by the court of law except when the court acted outside its jurisdiction.

In the words of Tew J. in *Re Native Court of Onitsha*:

If the court had imposed a punishment which it was not empowered to impose by the terms of its warrants, it seems to me quite clear that this court could issue a writ of Habeas corpus on the ground that the native court had acted without jurisdiction just as much as if the person sentenced had been a person not subject to the jurisdiction of the court and not consenting thereto. If then a court sentences a person to imprisonment for an offence other than that with which he has been charged and for which he has been tried, is it going too far to say that court has acted without jurisdiction and that this court, though it cannot entertain an appeal, will intervene to prevent an illegal sentence from being carried into effect?

On the other hand, if the court has jurisdiction to hear the matter before it and only came to a wrong decision on the merits of the case, the proper course is appeal and not the writ of *habeas corpus*. This point is illustrated by the case of *Gwaram v Superintendent of Prisons Kano*, where a non-Muslim was tried and sentenced to imprisonment by a Muslim court contrary to the law requiring his consent to be first obtained and so rendering the proceedings void in the then state of law. The High Court of the North refused the prisoner's application for

habeas corpus on the ground that the Muslim court had jurisdiction to try the offence and so the accused's conviction was not illegal, but only wrong in law. His proper course was therefore an appeal, which was allowed subsequently.

2. Case Stated

Case stated is a part of the rule of precedent in that a lower court may state or refer a case for the opinion of a higher court either *suo motu* or under a statute. The answer given by the higher court on such a case appears, according to the rule of precedent to be binding on the lower court that referred the case and, therefore, should act in accordance with the directives of the High Court. It has been held in *Ndokwu Mberekpe v Udom Adikes*, that in determining a case stated the court is restricted to a declaration of its opinion on the point of law raised and has no jurisdiction to make consequential orders.

A Magistrate's Court has power to state a case before a High Court for its opinion just as a High Court can do the same before the Court of Appeal. Cases stated may arise:

- a) Where some point of law arises during the proceedings of a criminal matter before a lower court in which case the court may reserve the matter and transmit the same to a higher court for ruling and guidance;
- b) Where the court is requested by the Director of Public Prosecution within six months of its judgment to state a special case on the judgment for the opinion of the higher court.

In using this procedure the lower court must transmit, together with the point of law requiring clarification, the following:

1. The substance of the charge, summons, information or complaint;
2. The facts found by the court to be admitted or proved.
3. All submissions of law made thereon both by the defence and prosecution;
4. The conviction or sentence imposed;
5. The findings of the court; and in case of conviction the sentence of the magistrate court; and
6. The question of law submitted for consideration.

3.7 The Federal High Court

The Federal High Court was originally constituted as the Federal Revenue Court by section 1 (1) of the Federal Revenue Court Decree 1973. Although the name has changed, it remains a court dealing

essentially in revenue matters relating to the Federal Government. It is a Superior Court of Record and has the power and status of a State High Court.

The Court consists of a Chief Judge and such number of judges as may be prescribed by an Act of the National Assembly. It operates in at least FNLJ judicial divisions altogether covering the entire country. The Court is constituted by a single judge sitting alone. A judge may sit with one or more assessors specially qualified in the area of subject under litigation to help him in determining and disposing of the issues in dispute.

If all parties to a civil matter should agree or the issues involved in such a case consist wholly or partly of accounts or call for a prolonged examination of documents or for scientific or local investigation which cannot be conveniently conducted by the court itself, then the court may order the case or any question of fact arising therein to be tried before a special referee, an officer of the court or an arbitrator acceptable to the parties. In that event, such a referee, official or arbitrator shall be deemed to be an officer of the court and his report shall, if adopted by the court be equivalent to a finding of the court and any award by him shall unless remitted or set aside, be binding on the court.

The Federal High Court entertains both civil and criminal matters in its original or appellate jurisdictions.

It has original jurisdiction to the exclusion of any other court in both civil and criminal cases and matters:

- a) Relating to the revenue of the Federal Government in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government, is a party;
- b) Connected with the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation.
- c) Connected with or pertaining to Customs and Excise duties and export duties including any claim by or against the Nigerian Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties.
- d) Connected with or pertaining to banking, banks and other financial institutions including any action between one bank and another, any action by or against the CBN arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes or other fiscal measures;

PROVIDED it shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.

- e) Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;
- f) Any federal enactment relating to copyright, patents, designs, trademarks and passing off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards;
- g) Any admiralty jurisdiction including shipping and navigation on the River Niger or River Benue and their effluent and on other such inland waterway as may be designated by any enactment to be international waterway, all Federal ports (including the constitution and powers of ports authorities for Federal ports) and carriage by sea;
- h) Diplomatic, consular and trade representation;
- i) Citizenship, naturalisation and aliens, deportation or persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas;
- j) Bankruptcy and insolvency;
- k) Aviation and safety of aircraft;
- l) Arms, ammunition and explosives;
- m) Drugs and poisons;
- n) Mines and minerals including oilfields, mining, geological surveys and natural gas;
- o) Weights and measures;
- p) The administration or the management and control of the Federal government or any of its agencies;
- q) Subject to the provisions of the Constitution, the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies;
- r) Any action or proceeding for a declaration or injunction affecting the validity of any execution or administrative action or decision by the Federal Government or any of its agencies;
- s) Jurisdiction in respect of treason, treasonable felony and allied offences; and
- t) Such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly;

PROVIDED nothing in the provisions of paragraphs (p),(q) and ® shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

In the case of *Co-operative Development Bank Plc v. Joe Dolday Co. Ltd. & Ors.*, it was held that the effect of this proviso is to confer concurrent jurisdiction with the State High Court with respect to the matters within the proviso and both the Federal High Court and the State High Court have and exercise jurisdiction in such circumstance notwithstanding the exclusive jurisdiction conferred by section 250(1).

A question of interpretation arose in *Jammal Steel Structures Ltd. V African Continental Bank Ltd.*, whether on the interpretation of s.7 (1) (b) & (III) of the Federal Revenue Court Decree 1973, “banking, foreign exchange, currency or other fiscal measures” includes ordinary banker-customer transactions. If it does, then the State High Court has no jurisdiction to entertain such a case by virtue of section 8 of the Act. The Supreme Court in a two to one majority judgment held that the provision of the law does not give the Federal High Court jurisdiction over all cases involving banks and banking transactions. According to the court, the High Court of a state has jurisdiction over disputes involving banking. Explaining the law, the court observed that:

...the true object and purpose of the Federal High Revenue Court Decree as can be gathered from the four corners of it, is the more expeditious dispatch of revenue cases, particularly those relating to personal income tax, company tax, customs and excise duties, illegal currency deals, exchange control measures and the like which the State High Courts were supposed to have been too tardy to dispose of especially in recent years. It does not seem to us that the legislative intention behind the Decree was to clutter up the new Revenue Court with ordinary cases involving banker-customer relationship, such as disputes in respect of an over-draft, or the negligent payment of a forged cheque or negligent dishonouring of a customer’s cheques – all “banking transactions” having nothing to do with Federal Revenue Court. All the State High Courts and other appropriate courts must continue to exercise their jurisdiction in these and similar matters if the Federal Revenue Court must be allowed to concentrate on its essentially revenue protection functions.

As a rule, the yardstick for determining whether the Federal High Court has jurisdiction over a subject matter is to see if it is specifically

mentioned in any of the statutes conferring jurisdiction on it. Where the subject matter is not specifically mentioned in any such statute, jurisdiction can still be inferred under the *ejusdem generis* rule.

Apart from exercising criminal jurisdiction in the above stated matters, the court can hear and determine criminal cases arising out of, or connected with any matter over which it has civil jurisdiction as well as offences in the Criminal Code to be enforced at the instance of the Federal Attorney-General. Again, additional causes or matters similar to the ones stated above may be included in the court's jurisdiction by order of the President of the Federal Government.

In the exercise of its appellate jurisdiction, the court presides over appeals from decisions of:

- a) The body of Appeal Commissioners established under the Companies Income Tax Act and Personal Income Tax Acts;
- b) The Board of Customs and Excise established under the Customs & Excise Management Act;
- c) Magistrate Courts in respect of civil and criminal cases or matters transferred to them under the Federal Revenue Court Decree 1973; and
- d) Any other body established by or under any other Federal enactment or law to deal with matters subject to the jurisdiction of the court.

By virtue of section 8 of the 1973 Act, the State High Courts have no jurisdiction in any matter with respect of which jurisdiction is conferred on the Federal High Court.

The practice and procedure of the court in civil matters is regulated by the Federal High Court (Civil Procedure) Rules 1976 and in criminal matters by the Criminal Procedure Act.

Appeals lie from the court to the Court of Appeal.

3.8 The Court of Appeal

The Court of Appeal is an intermediate court between the High Court and other subordinate courts and the Supreme Court. Until 1976 there was no central Court of Appeal. There was established a Court of Appeal under the Western Region Constitution of 1963 which came into being on April 1, 1967 and had jurisdiction in the Western States of Ogun, Ondo and Oyo. This Regional Court of Appeal was abolished in 1976 when the then Federal Military Government established in August of that year had jurisdiction throughout the country.

The present Court of Appeal is a Federal Court, a superior court of record, established on October 1, 1976 by the Constitution (Amendment) (No.2) Act 1976. The law is now to be found in the Court of Appeal Act and Sections 237 – 248 of the 1999 Constitution.

A single judge of the court may exercise all the powers of the court other than the power of final determination of any cause or matter provided that in criminal matters, refusal to exercise a power by a single judge may be referred to a duly constituted court of three justices. In civil matters, any order, direction or decision made or given by a single judge may be varied, discharged or reversed by a properly constituted court of three justices.

The court has and exercises jurisdiction throughout the federation. The central office of the court is now located in Abuja.

The jurisdiction of the Court of Appeal is defined statutorily. Its original jurisdiction is as provided in section 239(1) of the 1999 Constitution. It has exclusive original jurisdiction to hear and determine any question as to whether:

- a) Any person has been validly elected to the office of President or Vice President under the Constitution; or
- b) The term of office of the President or Vice President has ceased; or
- c) The office of President or Vice President has become vacant.

The Court of Appeal has jurisdiction to the exclusion of any other court in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory Abuja, High Court of a State, Sharia Court of Appeal of a state, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a state and from decisions of a Court Martial or other tribunals as may be prescribed by an Act of the National Assembly.

3.9 Appeals as of Right from a High Court

Appeals shall be from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

- a) Final decisions in any civil or criminal proceedings before the Federal High court or High Court sitting at first instance;
- b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;
- c) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the Constitution;

- d) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of the 1999 Constitution has been, is being, or is likely to be, contravened in relation to any person;
- e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;
- f) Decisions made or given by the Federal High Court or a High Court:
 - (i) Where the liberty of a person or the custody of an infant is concerned;
 - (ii) Where an injunction or the appointment of a receiver is granted or refused,
 - (iii) In the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise,
 - (iv) In the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability, and
 - (v) In such other cases as may be prescribed by any law in force in Nigeria.

Appeals will not be –

- a) From a decision of the Federal High Court or any High Court granting unconditional leave to defend an action;
- b) From an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree nisi on which the order was founded has not appealed from the decree nisi; and
- c) Without the leave of the Federal High Court or a High Court or of the Court of Appeal, from a decision of the Federal High Court or High Court made with the consent of the parties or as to costs only

In all other appeals from a High Court, it shall be with leave of the Federal High Court or High Court or of the Court of Appeal. An application for leave shall in the first instance be made to the Federal High Court or High Court, which gave the order or decision.

With respect to Appeals from the Sharia Court of Appeal or the Customary Court of Appeal or Customary Court of Appeal of a state, appeals shall be in civil matters as of right with respect to any question of Islamic Personal law or Customary Law, as the case may be.

Similarly, appeals to the Court of Appeal lie as of right from the decisions of the Code of Conduct Tribunal and the National Assembly Election Tribunals.

3.10 General Powers of the Court of Appeal

The Court of Appeal is a court of law and of equity. In addition to specific powers conferred on the court, it may exercise all and any of the following general powers:

1. The Court of Appeal may make any order necessary for determining the real question or issue in controversy in an appeal;
2. It may amend any defect or error in the record of appeal;
3. It may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal;
4. It may make an interim order or grant an injunction which the court below is authorised to make or grant;
5. It may direct any necessary inquiries or accounts to be made or taken and generally exercise full jurisdiction over the whole proceedings as if the proceedings had been instituted in the court of appeal as a court of first instance;
6. It may re-hear the case in whole or in part and it may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case;
7. In the case of an appeal from a court sitting in its appellate jurisdiction, the Court of Appeal may order the case to be re-heard by a court of competent jurisdiction;

Notices of appeal or of application for leave to appeal must be made to the appropriate court within a specific time:

- a) In an appeal in a civil cause or matter, 14 days where the appeal is against an interlocutory decision; and 3 months where the appeal is against final decision, from the date of the judgment.
- b) In an appeal in a criminal cause or matter, 90 days from the date of the decision appealed against.

3.11 The Supreme Court of Nigeria

The 1999 Constitution in section 230 provides that there shall be a Supreme Court of Nigeria consisting of the Chief Justice of Nigeria and such number of justices of the Supreme Court not exceeding twenty-one as may be prescribed by an Act of the National Assembly. However, for the purpose of exercising its jurisdiction, the court is duly constituted if it consists of not less than five justices, provided that a fuller court of seven justices shall be constituted when the Supreme Court is exercising its original jurisdiction under Section 232 of the Constitution or when

considering an appeal brought under Section 232(2)& (c) of the Constitution.

A single justice of the court may exercise any power vested in the full court other than that of finally determining any cause or matter provided that where he refuses an application in a criminal matter, an appeal may lie to the court for determination and that any order, direction or decision made or given by a single justice in exercise or reversed by the full court.

3.12 Original Jurisdiction

The Supreme Court, to the exclusion of any other court has original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question whether of law or fact, on which the existence or extent of a legal right depends.

The court shall also have such original jurisdiction as may be conferred on the court by an Act of the National Assembly provided that no original jurisdiction shall be conferred on the court with respect to any criminal matter.

3.13 Appellate Jurisdiction

The Supreme Court has appellate jurisdiction in civil and criminal causes or matters. It has exclusive jurisdiction to hear and determine appeals from the Court of Appeal. Appeals as of right from the Court of Appeal could be in the following cases:

- a) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal:

A ground of appeal may be said to be a question of law alone if it falls into any of five identified categories, though the category is by no means closed:

- (i) It is an error of law if the Court of Appeal took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or, if although applying the correct criteria, it gave a wrong weight to one or more of relevant factors.
- (ii) Issues that can be raised on legal interpretation of deeds, documents, terms of art, word, phrases and inferences drawn there from are grounds of law.

- (iii) Ground of appeal formulated on inferences to be drawn from a set of proved or accepted and undisputed facts constitute a ground of law.
- (iv) Where the Court of Appeal states the law on a point wrongly, it commits an error of law.
- (v) A ground of appeal that there was no evidence or no admissible evidence upon which a decision of finding was based, is regarded as a ground of law.
- b) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the Constitution;
- c) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of the 1999 Constitution has been, is being or is likely to be contravened in relation to any person;
- d) Decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;
- e) Decisions on any question:
 - (i) Whether any person has been validly elected to the office of President or Vice President under the Constitution,
 - (ii) Whether the term of office of the President or Vice President has ceased,
 - (iii) Whether the office of President or Vice President has become vacant; and
- f) Such other cases as may be prescribed by an Act of the National Assembly.

Save for the foregoing, appeals shall lie from the Court of Appeal to the Supreme Court, only with leave of the court of Appeal or the Supreme Court. Thus where the ground or grounds of appeal in a particular case are not of law alone, but of mixed law and fact or fact alone, the right of appeal can only be exercised where the aggrieved party has first sought and obtained the leave of either the Court of Appeal or of the Supreme Court.

The right of Appeal to the Supreme Court is exercisable in the case of civil proceedings, at the instance of:

- a) A party to the proceedings; or
- b) Any other person having an interest in the matter provided he obtains the leave of the Court of Appeal or the Supreme Court.

In the case of criminal proceedings, the right of appeal is exercisable at the instance of an accused person; the State or Federal Attorney General or other persons as may be prescribed by law.

The Supreme Court also exercises jurisdiction over appeals from decisions of the Sharia Court of Appeal of each of the Northern States, as earlier related in the discussion on the Sharia Court of Appeal.

3.13 General Powers of the Supreme Court

In every case or matter pending before the Supreme Court, in its original jurisdiction, it has power to grant either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided. The court may require the attendance of persons to give evidence or to produce documents or both. It may order the production of any document, exhibit or other things connected with the proceedings before it, where such production appears necessary for the determination of the case.

Also in the exercise of its jurisdiction in civil causes, where it appears expedient to call in any one or more assessors specially qualified, to assist in the adjudication of a case, the Supreme Court may do so and will hear the matter wholly or partially with the assistance of the assessors.

In the exercise of its appellate jurisdiction, the Supreme Court may exercise any power that could have been exercised by the court of appeal or may order the case to be retried by a court of competent jurisdiction.

4.0 CONCLUSION

In this unit we have studied the court systems in Nigeria and the generality of courts.

5.0 SUMMARY

This unit has taught the following:

- The court system in Nigeria
- The jurisdiction of Customary Courts and Sharia Courts over Customary Law marriage.
- When the High Court of a State can assume jurisdiction over Customary Law marriages.
- The jurisdiction of the High Court as conferred by the Matrimonial Causes Act, 1970.

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MODULE 2

Unit 1	Engagement
Unit 2	Legal Requirements for the Conclusion of a Valid Marriage
Unit 3	The Marriage of a Minor
Unit 4	Void and Voidable Marriages
Unit 5	Grounds on Which a Marriage is Voidable
Unit 6	Invalid Marriages under Customary Law

UNIT 1 ENGAGEMENT

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1.0 INTRODUCTION

An engagement is a contract between a man and a woman to marry each other on a specific or determinable date. An engagement may not be a normal contract although our law views it as a contract.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define the concept of “engagement” and distinguish it from other forms of contract
- explain the legal requirements for an engagement
- explain the contents and consequences of an engagement
- distinguish between the different circumstances in which an engagement can be terminated
- explain the consequences of termination of an engagement.

3.0 MAIN CONTENT

3.1 Engagement

An engagement is described as a contract between a man and a woman to marry each other on a specific or a determinable date.

Although our law at present views an engagement as a contract, an engagement is not a normal contract. It differs in the following respects:

1. A contract of engagement concluded by post comes into existence at the place, where and the moment when the person who makes the offer learns of the acceptance of the offer by the person to whom it is made; while in the case of an ordinary contract the contract comes into existence at the place, where and moment when the letter of acceptance is mailed.
2. Not everyone who has the capacity to enter into a contract in general has the capacity to enter into a contract of engagement. Only persons who are competent to marry one another can enter into a contract of engagement with each other. The Marriage Act i.e. Matrimonial Causes Act, 2004 does not lay down any mandatory age for marriage but the Children and Young Persons Law of many states in Nigeria prohibit child marriages.
3. In certain circumstances and for good reasons, an engagement may be terminated unilaterally. The fact which is applied is what a reasonable person would have done in the same circumstances. In the case of other contracts one party may resile (unilaterally) only if the

other commits a breach of contract, or in specific instances, if the breach of contract is of a serious nature, or if the party has stipulated a right to resile in the contract.

4. In the case of other contracts and with certain exceptions, one party is entitled to claim specific performance from the other, i.e. the other party must do precisely what she or he undertook to do. If the position were the same in the case of a contract of engagement it would mean that one party would be able to force the other to marry him or her. S3 (1)(d) of the Matrimonial causes Act, 2004 requires voluntary consent of parties to marriage as a prerequisite for the celebration of statutory marriage.
5. Compensation on breach of contract of engagement (breach of promise) is based on positive and negative interest. Damages are calculated in a sui generic manner. While rule for breach of contract is that damages are calculated in accordance with positive interest.

SELF ASSESSMENT EXERCISE

How does the contract of engagement differ from other contracts?

3.2 Requirements for a Valid Engagement

1. Concensus
2. Capacity to act
3. Lawfulness and possibility
4. Judicial or factual possible.

Concensus

Two types of consent are relevant here:

- a. Consent of the partner and parental consent under Section 3(1)(d) of the Matrimonial Causes Act, 2004 which provides that parties are capable of granting their consent and that parties should agree to marry before any bethrotal arrangement is undertaken. It must be noted that material mistake, and material misrepresentation excludes consensus. The consequence of a material mistake is that the engagement is void. On the other hand, the consequence of a material misrepresentation is that the engagement is voidable at the instance of the party who was misused. It does not matter whether the misrepresentation was made deliberately or innocently. *Osamwonyi v. Osamwonyi* (1972) IOSC 1; (1972) 1 All NLR 356.

An engagement to marry is a contract of *uberrime fidei* (that is, of the utmost good faith) and a party with a skeleton in his cupboard is obliged to disclose it.

In *Osamwonyi v. Osamwonyi*, the petitioner went through marriage under the Marriage Act with the respondent in Lagos on 21 June, 1967. on 6th July, 1968 the petitioner filed a divorce petition on the ground that in 1964, the respondent was lawfully married to Patrick Goubadia according to Benin native law and custom and that the said marriage was not dissolved until 14 August, 1967 by a Benin Customary Court which ordered that a refund of €60 (N12,000) dowry should be made to the said husband. It was established in evidence that some time before 1966, the said Goubadia in contemplation of a proposed statutory marriage and unknown to the respondent at the time, paid the respondent's father the sum of sixty pounds as dowry. On learning about the payment, the respondent in September 1966 rejected any proposal of marriage by Goubadia and the whole idea of marriage between them was abandoned. The respondent averred that she never gave her consent to or entered into a marriage with the said Guobadia. The Supreme Court, upholding the decision of the court of first instance, held that the consent of the bride-to-be was a condition precedent to a marriage under Benin customary law. As no such consent was given, there was in fact no subsisting customary law marriage at the time the respondent married the petitioner.

The importance of covenant cannot be over emphasised.

Capacity to Act

The parties to a customary law marriage must possess the capacity under their law to marry each other.

A party to a marriage must not be an infant. He or she must be mature enough for marriage. The Marriage Act however, does not provide any mandatory minimum age for marriage. The Matrimonial Causes Act makes a marriage void where "either of the parties is not of marriage age".

Lawfulness and Possibility

An engagement is lawful if both parties are unmarried and is possible if the parties are able to marry one another.

3.3 Incidents or Termination of Engagement

1. The death of either of the engaged persons

2. Mutual agreement to terminate the engagement
3. Withdrawal of parental consent where one of the parties is a minor
4. Unilateral and justified termination based on sound reasons.
5. Breach of promise

One of the parties may unilaterally and lawfully terminate the engagement if there is a *justa causa* (sound reason) for such termination.

A *justa causa* is a fact or an occurrence which comes about after the engagement has been entered into and which according to human experience will seriously jeopardise the chances of a happy and lasting marriage. The realisation by one of the parties that he or she no longer loves the other party will not seriously jeopardise the chances of a happy and lasting marriage. The termination of the engagement for this reason will constitute a breach of promise; if it were otherwise it would mean that the engagement would lose its legal recognition as an agreement creating obligations.

Breach of Promise

This is an unlawful termination of an engagement. The consequence of a breach of promise to marry is that the innocent party can withdraw from the engagement. He or she can also claim damages for breach of contract from the “guilty party”.

Uso v. Iketubosin (1975) WRNLR 187: The defendant promised to marry the plaintiff in 1947. In 1957 the defendant married another woman in breach of his promise to the plaintiff.

Iswin, J., held that the defendant’s act constituted a breach for which the plaintiff was entitled to damages.

4.0 CONCLUSION

You must have seen that a valid engagement is not a prerequisite for the conclusion of a valid marriage but most marriages are preceded by an engagement.

5.0 SUMMARY

This unit has taught the following:

- What the engagement is
- The legal requirements for an engagement
- The circumstances in which an engagement can be terminated

Consequences of termination of engagement

6.0 TUTOR MARKED ASSIGNMENT

1. Explain what you understand by a *justa causa*?
2. List the requirements for a valid engagement
3. Define the concept engagement
4. If one of the parties to the engagement commits a breach of promise what remedies are available to the other party?

7.0 REFERENCES/FURTHER READING

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UNIT 2 LEGAL REQUIREMENTS FOR THE CONCLUSION OF A VALID MARRIAGE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Essentials of a Valid Marriage
 - 3.2 Prohibited Degree of Consanguinity and Affinity
- 4.0 Summary
- 5.0 Conclusion
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Marriage is a universal institution, the root of a family and the society. It is characterised by the acquisition of status. It is a social institution founded on and governed by the social and religious norms of the society. Marriage is valid only if certain legal requirements are met.

2.0 OBJECTIVES

At the end of this unit, you should be able you to:

- define the concept of marriage
- list the legal requirements for a valid marriage
- explain the factors which have an influence on each of the requirements for a valid marriage
- explain how each factor influences the requirements for a valid marriage.

3.0 MAIN CONTENT

3.1 Essentials of a Valid Marriage

There are some essential considerations which ensure the validity of a marriage. The parties to a marriage under the Marriage Act must possess the necessary capacity contained in the statute.

Age

A party to a marriage must not be an infant. He or she must be mature enough for marriage. The Marriage Act does not provide any mandatory minimum age for marriage. The Matrimonial Causes Act makes a marriage void “if the parties are not of marriageable age” but it does not define the term marriageable age. The absence of a legal minimum age for marriage is a contributory factor to the incidence of child marriage and its attendant problems. It must be noted that some people are totally incapable of marrying because they have no capability to act. They include infants i.e. children below the age of 10 years and mentally ill persons.

In some parts of Nigeria, the minimum age for customary law marriage has been fixed by legislation. The age of marriage under customary law is governed by the age of Marriage Law in the former Eastern State of Nigeria now (Abia, Enugu, Ebonyi, and Anambra). In the Law of 1956, Section 3(1) of the Law provides that “a Marriage...between or in respect of persons either of whom is under the age of sixteen years shall be void”. Therefore, if a party of such a void marriage is charged with any of the sexual offences under the criminal code arising from having an unlawful carnal knowledge of a girl, it is a good defence to prove that the accused had reasonable cause to believe that the girl in question was his wife.

By section 4(1) of the Law, it is an offence punishable with six months imprisonment or a fine of two hundred naira for any person to act, receive or obtain any property or benefit of any kind for himself or from any other person on account of a marriage which is void under the law. Similarly, it is an offence to give confer on, or procure from any person any property or benefit in relation to such a void marriage. In the Northern states of Nigeria, especially Borno, Benue and Kwara States, the marriageable age for girls has been fixed by the various declarations of Native Marriage Law and Custom Orders made in respect of these areas. Kwara - 13 years, Idoma & Tiv in Benue state 12 yrs, Tiv – age of puberty. It must however be noted that a person with mental disorder

or disability who cannot understand the nature and consequences of his or her acts owing to mental disorder lacks the capacity to contract a marriage.

Consent of the Parties

How does the contract of engagement differ from other contracts?

The voluntary consent of the parties is essential for the celebration of a valid marriage. Absence of such consent or where it was obtained under duress, fraud or misrepresentation vitiates the agreement. See Section 3(1) (d) Matrimonial Causes Act, 1990.

The law requires that at the moment of contracting the marriage both parties thereto must have the will to marry each other. Various factors may have effect on consent. These are mistake, misrepresentation, duress and undue influence.

In respect of a mistake, only a material mistake excludes consent. Mistake concerning the identity of the other party and mistake concerning the nature of the juristic act are the only forms of material mistake in respect of marriage. A material mistake that goes to the root of the marriage renders that marriage void for lack of consent: see *Osmmwoyi v. Osamwoyi*, supra.

A mistake is not material where one of the parties is mistaken about certain facts concerning the marriage itself or the personal attributes of the other party unless such misunderstanding was caused by a misrepresentation on the part of the other party. A non-material mistake is irrelevant to the marriage and is therefore not a ground for its dissolution.

In respect of misrepresentation, a serious misrepresentation affects the validity of a marriage. An example of a serious misrepresentation is where a woman is already pregnant by another man at the time of contracting the marriage and fraudulently conceals this. In this case the husband can have the marriage set aside.

Duress (i.e. force) is where one of the spouses has been forced, through duress, to consent to the marriage, the marriage is voidable.

Undue Influence: This is a situation where one of the parties of the marriage has been influenced in his or her choice and has been persuaded to contract the marriage, due to the influence.

Parental Consent

Where either of the parties to a statutory marriage not being a widow or a widower is under twenty-one yrs of age, he or she must obtain the written consent of the father. But if the father is dead or of unsound mind or absent from Nigeria, the mother may give the necessary consent. Where both parents are dead or are of unsound mind or absent from Nigeria, the guardian of the minor can give the consent. The written consent is to be signed by the person giving it.

In *Agbo v. Udo* (1947) 18 NLR 152, the plaintiff contracted a statutory marriage with his wife. He later petitioned the court for the dissolution of the marriage on the ground of his wife's adultery with a co-respondent. The co-respondent contended that the wife was a minor at the time the marriage was celebrated and that no parental consent was obtained as required by law. Consequently, there was no valid marriage between the applicant and his wife which the court might dissolve. It was held that notwithstanding, the absence of parental consent the marriage was valid under 33(3) of the Marriage Act.

Marriage must be Lawful

Marriage under the Act is monogamous in nature, being a union of one man and one woman to the exclusion of all others. Consequently, a party to a subsisting statutory or customary law marriage has no capacity to enter into another statutory marriage with another person. In *Obeleiniya v. Obele* (1973) 1 NMLR 155, the court observed that non-observance of the rule makes the subsequent marriage void, and is an offence punishable by imprisonment under Section 370 of the Criminal Code of Nigeria. Sections 35 and 48 of the Marriage Act also lay down 12 years imprisonment. The case of *R v Princewill* (1963) NNLR 54 gives the impression that a marriage is not valid unless it is lawful for the parties to marry. It must be remembered that this rule duly applies to statutory marriages in our country. Some people marry in terms of other systems of law which permit a man to take more than one wife i.e. marriage according to customary laws of individuals and/or Islamic Law marriage. Customary Law/and or Islamic Law marriages are recognised for all purposes and they are valid marriages. However, they do not enjoy the same level of protection and recognition as statutory marriage.

SELF ASSESSMENT EXERCISE

List the requirements for a valid marriage.

3.2 Prohibited Degree of Consanguinity and Affinity

The law forbids the marriage of persons related by blood or by marriage. The prohibited degrees of consanguinity and affinity are as stated in the Matrimonial Causes Act.

Consanguinity

Affinity

Marriage to a man is prohibited if the woman is or has been his

Ancestress,
 Descendant
 Sister
 sister
 Mother's sister
 Brother's daughter
 Sister's daughter

Wife's mother
 Wife's grand mother
 wife's daughter
 Father's wife son's daughter
 wife's daughter's daughter
 Father's wife
 Grand father's wife
 Son's wife
 Son's son wife

Marriage to a woman is prohibited if the man is or has been her ancestor.

Descendant
 Brother
 Father's brother
 Mother's brother
 Brother's son
 Sister's son

Husband's Son
 Husband son's son
 Husband's daughter's son
 Mother's husband
 Grand mother's husband
 Daughter's husband
 Son's daughters' husband
 Daughter's daughter's husband

It is immaterial whether the relationship is of the whole blood or half blood or whether it is traced through or to any person of illegitimate birth. However, there is an exception to the general rule. The Matrimonial Causes Act enables two persons within the prohibited degree of affinity who wish to marry to apply in writing to a High Court Judge for permission. The Judge may by order permit the applicant to marry if he or she is satisfied that the circumstances of the particular case are so exceptional as to justify the granting of the permission sought. There are situations beyond the ordinary and are sufficiently serious as to permit the celebration of a marriage which otherwise would be void but where the case is out of the ordinary such as where parties

who are related, cohabit in a different location without knowing the relationship between them and have a child this may qualify as an exceptional case under Section 4 of the Matrimonial Causes Act.

Where the parties marry in pursuance to the permission granted to them by the judge, the marriage will be valid notwithstanding that they are within the prohibited degree of affinity.

Persons of same Sex

The Matrimonial Causes Act and the Marriage Laws of Nigeria prevent a man from marrying a man and a woman may not marry a woman. However, under some customary laws in Nigeria, certain marriages are contracted which may superficially be described as the union of two women. On the surface such an arrangement may be said to contravene the basic precept of marriage as a union between a man and a woman. However, there is more in those cases than meets the eye. The true position in each case is that there is at the background a man in whose name or behalf the marriage is contracted. For example, sometimes, a barren married woman as a means of securing her position in the family provides her husband with funds for the bride price in respect of a new wife who is expected to bear children in her place. In that case, the marriage is in fact contracted in the name of the husband and there is no question of one woman being married to another. In some parts of Nigeria, an unmarried but prosperous woman who desires to have a family of her own may if she cannot bear children “marry” another woman to do so on her behalf. She attains this objective by providing the bride price for the new wife who while living with her bears children. Usually internal family arrangements are made whereby the new wife bears children by specially chosen male members of the family or by a paramour.

Adoptive Parent and Adopted Child

A child may not marry the person who adopted him or her.

4.0 CONCLUSION

We have seen that non-compliance with provisions of the Marriage Act could render a marriage void and a marriage could be void if any of the following elements that constitute a valid marriage is missing, that is capacity, consensus, lawfulness and the prescribed formalities.

5.0 SUMMARY

This unit has considered the following:

What a marriage is

The legal requirements for a valid marriage

Factors that have influence on each of the requirements

How these factors influence the requirements for a valid marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. Will the second marriage of a man who honestly believes that he is legally divorced from his wife, but who is not, be a void marriage? Explain your answer.
2. Discuss the constitutionality of the prohibition of same sex marriage in Nigeria.
3. Can an adoptive parent marry his or her adopted child? Explain.
4. Can blood relatives in the direct line marry each other? Explain.
5. Is a marriage valid if it is not in agreement with Section 3(1) (d) Matrimonial Causes Act of 1990?

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UNIT 3 THE MARRIAGE OF A MINOR

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 Reference/Further Reading

1.0 INTRODUCTION

The marriage of a minor forms part of the previous unit but we wish to discuss it as a result of some cultural practices in our environment in relation to child marriage and because of the category of persons involved.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- indicate whose consent is necessary for the conclusion of the marriage of a minor under specific circumstances
- explain the validity of the marriage.

3.0 MAIN CONTENT

Age of Marriage

The Marriage Act does not lay down any mandatory age for marriage. Section 3(1) (e) of the Matrimonial Causes Act, 2004 makes a marriage void where either of the parties is not of “marriageable age”. But nowhere in the statute is the term “marriageable age” defined. In the absence of statutory definition of age of marriage, recourse may be had to the common-rule on the subject. Part of the received English Law in Nigeria is the Common Law of England. Under common law, a valid marriage may be contracted if the parties have attained the age of

puberty – fourteen years in the case of a boy and twelve years for a girl. See *Harrod v Harrod (1854) 1K& 4, 69 ER344*.

Also, the parties to a customary law marriage must possess the capacity under the law to marry each other. Most systems of customary law in Nigeria do not prescribe any age for solemnisation of customary law marriage. This lacuna in the rule of customary law has to a large extent encouraged a high rate of child marriages with all its attendant incidents. While in some area, child betrothal is rampant, marriage do not in fact take place until the parties have attained the age of puberty.

In some parts of the country, especially Imo, Anambra, Ebonyi, Abia and Enugu State, the minimum age for customary law marriage has been fixed by legislation.

Marriage and the Rights of the Child

The child is not without rights as there are legal instruments and standards, national regional and multinational, on the right of the child in Nigeria. The United Nations Convention on the Rights of the Child (the UN Convention) is a major step towards the entrenchment of clearly defineable rights for the child. The articulation of these rights in a Multilateral Convention, served to highlight basic but universally acceptable standards which all signatories became obliged to incorporate in their national laws and policies. These standards extend to the protection of the child's life, the promotion of health and educational opportunities and the prevention of exploitation; physical, economic or sexual. They emphasise that every child is entitled to opportunities and facilities which guarantee healthy and normal development.

The UN Convention in its preamble provides that the state parties to the convention should recognise that the child, for the full and harmonious development of his or her personality, should grow up in a family environment and in an atmosphere of happiness, love and understanding.

Nigeria is a signatory to the African Charter on the Right and Welfare of the Child. The charter stresses particularly the preservation and strengthening of positive African values which are complementary to the development of the African Child. In addition, it seeks to discourage those values which are harmful to the health and status of the child. The Constitution of the Federal Republic of Nigeria States in Section 17(3) (f) Charter II 1999 that “children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect.

There is also the Children and Young Persons Law (CYPL) of the states in Nigeria. Reference here is to Lagos State Law. It provides for the welfare of the young, the treatment of young offenders, and the establishment of juvenile courts. It also provides for juveniles in need of care and protection.

The CYPL defines a “child” as “a person under the age of fourteen years, and a young person as “a person who has attained the age of fourteen years and is under the age of eighteen years.

The UN Convention defines a child as “every human being below the age of eighteen years unless under the Law applicable to the child majority is attained earlier.

To prevent the exploitation of the child, the UN Convention stipulates that state parties shall take all appropriate legislative, administration social and educational measures, to protect the child:

- a. From all forms of physical or mental violence, injury or abuse, neglect or sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.
- b. From economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.
- c. From all forms of sexual exploitation and sexual abuse.
- d. State parties are also to take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form and the omnibus provision that,
- e. State parties shall protect the child against all forms of exploitation prejudicial to any aspect of the children welfare.

The Child’s Right Act was promulgated to secure basic health care, education, recreation and protection of the child and to stem the scourge of child trafficking and child exploitation.

Sex Abuse and the Child Right Act

Sexual abuse has been defined as “any act of a sexual nature upon or with a child by an adult. It is also defined as the involvement of dependent developmentally immature children and adolescents in sexual activities they do not truly comprehend to which they are unable to give informed consent or that violate the social taboos of family roles.

The Criminal Code provides for the protection of children against sexual abuses. The Unlawful and indecent treatment of a boy under the age of fourteen years makes the culprit liable to imprisonment for seven years. The defilement of a girl under the age of thirteen years is punished with life imprisonment (Sections 216, 218 and 233 of the Criminal Code). It also legislates against the indecent treatment of girls under sixteen. Section 222 of the Criminal Code provides against the procurement of girls under eighteen years while Section 233 of the Criminal Code provides against abduction. The Child's Rights Act prohibits child marriage. It states:

No person under the age of 18 years is capable of contracting a valid marriage and accordingly, a marriage so contracted is null and void and of no effect whatsoever.

It also stipulates that:

No parent guardian or any other person shall betroth a child to any person.

A person who marries a child or to whom a child is betrothed or who promotes the marriage of a child commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both. See Sections 21.22.23 Child's Rights Act.

The issue of child marriage and sexual relations within marriage are not generally considered to amount to sexual abuse once the bride has attained puberty. It is doubtful whether the mere fact of marriage eliminates the psychological trauma of a developmental immature child who is engaged in sexual activity under the guise of marriage. There is no doubt that early sexual relations are physically harmful to the child as witnessed by the incidence of the vesico – vaginal fistula(VVF) which is a condition common to young girls who give birth before their pelvic bones have fully matured. Prolonged obstructed labour gives rise to injury to the bladder, urethra, and lower end of the bowel causing constant leakage of urine and sometimes vaginal excretion of faeces.

Consent Necessary for the Marriage of a Minor

Minors have limited capacity to act and must therefore obtain the necessary consent in order to have capacity to act for the purpose of entering into marriage.

Parental consent is necessary and in some cases mandatory for the celebration of a valid customary law marriage. Support is lent to this principle by the fact that to some extent customary law marriage is a

transaction between two families. The requisite consent is that of the father, or guardian who is in *loco parentis* to the prospective spouse.

Effect of the Absence of the Necessary Consent

Marriage under the Act is null and void if either of the parties is not of marriageable age. Neither the Marriage Act nor the Matrimonial Causes Act prescribes any marriageable age. A customary marriage may be void in the following instance:

Parental Consent

Parental Consent is an essential requirement of a valid customary marriage. In the absence of such consent the marriage is void because there will be no valid arrangement for the payment of the bride price and there cannot be a proper “handing-over” of the bride resulting in an inchoate marriage.

4.0 CONCLUSION

This unit shows that the giving of the requisite consent is one of the legal essentials to a valid marriage. The silence of the marriage Act in relation to the consent of the parties is ameliorated by the Matrimonial Causes Act, 1970 which provides for the real consent of the parties, that is, consent obtained without duress or fraud.

5.0 SUMMARY

This unit helps us to find out:

where parties' consent is needed for a marriage contracted by a minor.

the effect failure to obtain the necessary consent has on the validity of the marriage of a minor.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss how failure to obtain consent from the parents or guardian affects the validity of a minor's marriage.
2. Whose consent is needed if a boy of 6 years wants to marry a girl of 16 years?

3. If one or both parents are absent, and the minor cannot obtain their consent for good reason, whose consent will be necessary before the minor can enter into marriage?

7.0 REFERENCES/FURTHER READING

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UNIT 4 VOID AND VOIDABLE MARRIAGES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Nullity of Marriage
 - 3.2 Void Marriage
 - 3.3 Approbation
 - 3.4 Grounds for the Voidability of Marriage
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

We shall look at void and voidable marriages. We have examined the legal requirements for a valid marriage. We have seen that non-compliance with other requirements renders a marriage void while non-compliance with other requirements renders it voidable.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- distinguish between void and voidable marriages
- list the grounds for nullity of marriage and identify the cases that resort under each ground
- list and explain the grounds for voidability of a marriage.

3.0 MAIN CONTENT

3.1 Nullity of Marriage

Nullity of marriage is distinguishable from other matrimonial reliefs like divorce, judicial separation and restitution of conjugal rights. These are available in respect of valid and existing marriages. A suit for nullity is

one by which a party seeks to establish that owing to some defects the marriage is invalid. In proceedings for nullity, the ceremony of marriage must be strictly proved. See *Mbonu v. Mbonu* (1976)1 FNR 57. An invalid marriage may be void or voidable. A void marriage is one that has never been in existence. In practical terms it means that the parties have gone through a ceremony of marriage but have never acquired the status of husband and wife owing to one impediment or the other. Lord Green in *De Reneville V De Reneville* (1948) ALLER 56 out succinctly put it thus:

A void marriage is one that will be regarded in every court in any case in which the existence of the marriage is in issue as never haven taken place and can be so treated by both parties to tie without the necessity of any decree annulling it.

This view was adopted in *Mbonu v Mbonu* (1976)I FNR 57.

A void marriage is the one that has never existed. A voidable marriage is one that will be regarded by every court as valid until a decree annulling it has been pronounced by a court of competent jurisdiction.

A voidable marriage is regarded at law as a valid and subsisting one until it is set aside by a decree of a competent court. It follows that parties to a void marriage need no decree to annul. A voidable marriage can be annulled at the instance of one or both parties owing to some existing defects. The marriage can only be annulled by a court of competent jurisdiction. In the case of a void marriage, it is not necessary to obtain a court decree because the parties have never been husband and wife but a decree may be obtained to allay any doubt and lay the matter to rest. Such a decree simply declares the existing facts that there has never been a marriage.

Any person may assert the invalidity of a void marriage where the marriage is voidable. One of the spouses can do so because until it is annulled the marriage is valid. At the death of a husband or wife to a void marriage for example, the invalidity of the marriage may be challenged by the relations or executors in order to show that the surviving spouse is not his widow or her widower. Such action may be taken to establish that he/she is not entitled to his/her property. If the marriage is simply voidable, it cannot be questioned by third parties because up to the death of the husband or wife, it was a valid and subsisting marriage. The wife in such a case has all the rights of a widow.

3.2 Void Marriages

A void marriage never comes into existence (it is void *ab initio*).

3.3 Approbation

A marriage that is void *ab initio* cannot be given legal effect by the conduct of the parties thereto. However, in the case of a voidable marriage a party to it may by his act put it out of his power to obtain a decree of nullity. By this conduct, that party forfeits the rights to challenge the validity of the marriage. Lord Watson explained the principle in the case of GUN (1885) IOAC 171, 197-8(HL) where he said “in a suit for nullity of marriage there may be facts and circumstances proved which so plainly imply, on the part of the complaining spouse, a recognition of the existence and validity of the marriage as to render it most inequitable and contrary to public policy that he or she should be permitted to go on to challenge it with effect. Approbation may arise from the overt act of a party to the marriage or from delay in petitioning for nullity or as a result of accepting the material benefits of the marriage. In *WvW* (1952) IAll ER 858 – where the husband petitioner consented to two adoptions-it was held that the adoptions involved a representation to the court that the joint adoptions were husband and wife.

SELF ASSESSMENT EXERCISE 1

What are the grounds for voidability of a marriage?

3.4 Grounds for the Voidability of Marriage

1. Existing Lawful Marriage

The Matrimonial Causes Act 1970 lays down grounds which may make a marriage void *ab initio*. By Section 3(1) (a) of the Matrimonial Causes Act of 1970, where either of the parties to a marriage is at the time of its celebration lawfully married to some other persons, such marriage is null and void. The instances where this may arise are:

- a. Where customary law marriage precedes a statutory marriage with a different person. See *Nwakpele v Bwakpele*(1973) 3 UILR 84. This is also dealt with by Section 33(1) of the Marriage Act, which provides that :

No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married by native law or custom to any person other than the person whom such marriage is had. To invalidate a marriage celebrated under the Marriage Act on the ground of a previous marriage under customary law, the previous marriage must be proved with a high degree of certainty. *Osamwoyi v Osamwoyi*(1972) IO SC .

- b. Where a person who is married under the Marriage Act purports to contract a customary law marriage with a third party during the subsistence of the first marriage; it is necessary that the subsisting statutory marriage must have been contracted in accordance with the Marriage Act in Nigeria. Any customary law marriage, with a party such statutory marriage purports to contract subsequently, is null and void.

- c. Where a person who is a party to a subsisting marriage purports to contract another marriage with a third party either under the Marriage Act or under a foreign marriage law; the position is the same where a person who is married under a monogamous system abroad attempts to marry a third party in Nigeria under the Marriage Act; in both cases, the subsequent marriage is void *ab initio* as the person lacks the capacity to contract such marriage during the subsistence of the previous one. S. 33(1) was considered in *Oshodi v Oshodi* (1963) 2AllNLR 214, where a wife Folashade petitioned for divorce on the grounds of cruelty and adultery. The respondent contracted a valid marriage in 1954 with one Sikiratu, under Yoruba Islamic Law and Custom pertaining to the Ahmadiya Muslim Movement in 1955, the respondent and the petitioner were married under the Yoruba native law and custom. The petitioner knew of the 1954 marriage and all three lived together before the petitioner and the respondent left for England. In 1956, the petitioner and the respondent went through the English form of marriage. The respondent contended that the English marriage of 1956 was a nullity and consequently the petitioner was not entitled to the relief sought. The court held that the 1956 marriage was not celebrated in Nigeria and as such Section 33(1) was relevant. However, the correct approach to problems of marriage under a foreign law should have been through the Conflict of Law rules: capacity to marry is determined by the *lex domicilii* of the parties. If by that law a person was regarded as a married man he cannot contract a valid monogamous marriage with another person. The second marriage constitutes the offence of bigamy *strictu sensu* in Nigerian Law vide Section 370 of the Criminal Code Act and *R v Princewill* (1963) NNLR 54.

SELF ASSESSMENT EXERCISE 2

What is the legal consequence of a marriage void *ab initio*?

2. Prohibited Degrees of Affinity or Consanguinity

Any statutory marriage celebrated in Nigeria by parties who are within the prohibited degrees of consanguinity or affinity will be void. See Section 33(1) of the Marriage Act: and Section 3(1)(b) of the Matrimonial Causes Act of 1970.

However, it is possible that there are some circumstances under which it is possible for persons within the prohibited degree of affinity to marry each other with the consent of a High Court Judge.

3. Formal Invalidity – Invalidity by the Lex Loci Celebrations

The formal validity of a marriage is governed by the law of the place of celebration. It is this law that determines whether the location rules as to form were complied with. A marriage which failed to comply with the form proscribed by the place is void. Section 33(2) of the Marriage Act provides that a marriage shall be null and void if both parties knowingly and willfully acquiesce in its celebration without compliance with some formalities prescribed by the Act.

a. Place of Celebration

A marriage under the Marriage Act must be celebrated in a Registrar's office or licensed place of worship, or a place prescribed with a special license. A marriage celebrated in any place other than these will be void *ab initio*. See 33(1) (a) of the Marriage Act. So, a marriage will be invalid if celebrated in a church that is not licensed, or in private home (unless authorised in a special licence).

In *Bello v. Bello* the parties went through a form of ceremony of marriage at the Celestial Church of Christ, Queen Elizabeth Road, Ibadan. The church issued them a certificate of marriage. It was adduced in evidence that the Celestial Church of Christ where the marriage took place was not licensed for the celebration of marriages. Kayode Esho JSP (as he then was) held that the marriage was celebrated in violation of Section 33(2) of the MCA 1970 and therefore void *ab initio* under Section 3(1)(c.) of the A 1970.

b. Celebration of Marriage Under False Name or Names

Where both parties of a marriage under the Act are aware that it is celebrated under false names, such a marriage will be void *ab initio*-Section 33(2) (b).

c. Celebration Without a Certificate or a Special Licence

For a church marriage to be regarded as valid, the following factors must be complied with:

- i) The parties or at least one of them must have intended to contract a union recognised by the Act and in the particular church celebrating the marriage.
- ii) There must be a belief that they in fact contracted such a marriage
- iii) At least one of the parties must be ignorant of the failure to comply with the provision of the Marriage Act.
- iv) The aggrieved party must give evidence in proof of the marriage and as to his or her intention to contract a valid statutory marriage.

In *Akwudike v Akwudike* (1963) 1 ENLR 5 the parties were married on the 31st May, 1958 at St Mary's Catholic Church, Port Harcourt, in the presence of a Roman Catholic Priest and two witnesses. No notice of marriage was given in accordance with the Marriage Act and the Registrar's Certificate was not issued to the parties. The Priest in fact performed a "Roman Catholic Marriage" which was not in compliance with the Marriage Act. It was contended on behalf of the respondent that the court had no jurisdiction to entertain the petition as the marriage was performed solely in accordance with the rites of the Roman Catholic Church, without compliance with the requirement of the marriage Act. It was further argued that the marriage which was celebrated without the necessary Registrar's Certificate was void. Idigbe, J (as he then was) held that:

... if the intention of the parties was to get married under the ordinance and they believe that they went through a form of marriage recognised by law (i.e. ordinance), then if the marriage had been performed in a place of worship licensed under the Ordinance for the purpose, the marriage – in my view – would not be void merely by reason of non compliance with Section 11 and 13 unless it was affirmatively shown that the parties (both parties) willfully and knowingly failed to comply with the said sections.

The learned trial judge found that the petitioner had no knowledge of the legal requirements of a valid marriage under the Act. Further it was her intention and belief that she was going through a marriage recognised by both the church and the Act. It could not therefore be held that she willfully and knowingly acquiesced in any irregularity intended by her husband and the officiating minister. It was held that her marriage was valid and the court had jurisdiction to dissolve the marriage.

d. Not Celebrated by a Recognised Minister of Religion or a Registrar of Marriages

A marriage under the Act must be celebrated either by a recognised minister of a religious denomination or body or by a registrar of marriages. Non compliance with the requirements makes the marriage void *ab intio* under the Marriage Act.

SELF ASSESSMENT EXERCISE 3

Distinguish between a void marriage and avoidable marriage.

4. Lack of Real Consent

It is a cardinal principle in our law that the parties to a marriage must have freely consented to the union. Absence of consent will invalidate the marriage or where there is an apparent consent and a party did not actually give her real consent it may be negated by various functions:

1. Fraud or Duress

Where the consent of one party to a marriage was obtained by duress or fraud, the marriage will be void because it lacked the consent of the other party. Marriage contracted under the condition will be in violation of the Section 3(1)(d)(i) of the Matrimonial Causes Act of 1970. Duress or fraud may violate consent; fraud implies some dishonest misrepresentation by a party to the marriage by which the consent of the other was obtained. Duress is such compulsion that affects the mental attitude of the party. It has to be shown that the duress created a state of fear or apprehension which prevented that party from freely consenting to the marriage. It is irrelevant that the party whose consent was so obtained is more susceptible to pressure than a person of ordinary courage.

2. Mistake

This is where the consent of a party to the marriage is not a real consent because that party is mistaken as to the identity of the other party or as

to the nature of the ceremony performed. Mistaken identity will invalidate a marriage where a person desires to marry a party but in fact married another person. An action will however fail if the mistake is to the attribute and not the identity. For example, in a situation where a party agreed to marry the other on the belief that he was wealthy and it turned out that he was actually poor, the marriage will not be decreed invalid. There must be mutual consent on the nature of the undertaking or ceremony.

3. Insanity

A marriage is null and void where the consent of one of the parties is not real because that party is mentally incapable of understanding the nature of the marriage contract. This was clearly stated in Section 3(1)(d)(iii) of the Matrimonial Causes Act of 1970.

4. Marriageable Age

Under Section 3(1)(e) of the Matrimonial Causes Act a marriage is null and void if either of the parties is not of marriageable age. As it has been pointed out earlier, neither the Marriage Act nor the 1970 Act prescribed any marriageable age. In the absence of any defined age limit, it has been suggested that resort should be to the common law age of marriage. Owing to lacuna in our law, Section 3(1)(e) of the Act has no effect whatsoever until some age – limit is fixed by law.

4.0 CONCLUSION

The requirement for a marriage to be valid is that the prescribed formalities must have been complied with. If the condition precedent for a valid marriage is not complied with, the marriage can be void *ab initio*. The grounds for void and voidable marriages are discussed in the unit.

5.0 SUMMARY

This unit has examined the following:

- the distinction between void and voidable marriage
- the grounds for nullity of a marriage
- the grounds for voidability of a marriage
- the consequences of a void marriage under the Matrimonial Causes Act.

6.0 TUTOR-MARKED ASSIGNMENT

1. List the grounds for nullity of a marriage.
2. List the grounds for voidability of a marriage.

3. Distinguish between a void marriage and a voidable marriage.
4. Will a marriage be void if it was not celebrated in accordance with the provisions of the Marriage Act?

7.0 REFERENCES/FURTHER READING

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UNIT 5 GROUNDS ON WHICH A MARRIAGE IS VOIDABLE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Grounds on Which a Marriage is Voidable
 - 3.2 Incapacity to Consummate Marriage
 - 3.3 Unsoundness of Mind, Mental Disorder and Epilepsy
 - 3.4 Venereal Disease
 - 3.5 Pregnancy of the Wife by a Person Other than the Husband
 - 3.6 Consanguinity and Affinity
 - 3.7 Effect of the Decree of Nullity
 - 3.8 Conflict of Laws
- 4.0 Summary
- 5.0 Conclusion
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

This study unit is closely connected with the previous two study units where legal requirements for a valid marriage and marriage where described. In those units, we said that non-compliance with certain requirements, renders a marriage void while non-compliance with other requirement renders it voidable.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- distinguish between void and voidable marriage
- list the grounds for nullity of marriage and identify the cases that resort under each ground
- list and explain the grounds for voidability of a marriage
- discuss the nature and consequences of each ground.

3.0 MAIN CONTENT

3.1 Grounds on Which a Marriage is Voidable

The grounds on which a marriage celebrated after the commencement of the Matrimonial Causes Act will be voidable are laid down in Section 5 of that Act. The grounds are exclusive and you are enjoined to read that section.

3.2 Incapacity to Consummate Marriage

A marriage is voidable where either of the parties to it is incapable of consummating the marriage. One aspect of incapability is because of impotence. Impotency should be distinguished from sterility which is the incapacity to procreate. An impotent person is one who is incapable of having normal sexual relations. A person may be capable of having normal sexual intercourse but nevertheless be sterile. To consummate a marriage, there must be ordinary and complete sexual intercourse. Where sexual relations are partial or imperfect there will be no consummation. Consummation, therefore, requires the full penetration of the female organ by the male in the ordinary sense. In order to make a marriage voidable the incapacity to consummate must exist both at the time of the marriage and at the hearing of the petition.

Where a marriage is not consummated after a reasonable period and the respondent refuses to submit to medical examinations, there may be a presumption that the respondent is incapable. In *Akpan v. Akpan* (suit WD/12/67 (unreported), Lagos, 27, July 1968), the parties were married in London on 28th January, 1965. Throughout the period of their cohabitation in England and their journey back to Nigeria they shared the same bed, but there was no sexual intercourse. The respondent attempted several times to have intercourse but was never successful. On each occasion, he could have no erection. The medical inspectors report and the medical evidence established that the petitioner was able to consummate the marriage. The respondent refused to submit to medical examination. It was held that failure to consummate the marriage was due to the incapacity of the respondent. However, it must be noted that before a marriage is declared voidable on the ground of incapacity to consummate, the court must be satisfied that the disease is not curable. By this, it is meant that the disease cannot be cured by medical treatment.

3.3 **Unsoundness of Mind, Mental Disorder and Epilepsy**

A marriage is voidable if at the time of its celebration one of the parties was of unsound mind, or mentally defective, or subject to recurrent attacks of insanity or epilepsy. If however, any of these mental deficiencies arose only after the marriage, it will not void the marriage.

Unsoundness of mind means insanity, it involves the incapacity of a person to manage himself and his affairs. A mentally defective person is defined in Section 5(1) (b) of the Matrimonial Causes Act 1970: “as a person who owing to an arrest or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight, care of control for his own protection or for the protection of others and is, by reason of that fact, unfit for the responsibilities of marriage.

A spouse who is of unsound mind or mentally defective is regarded by the law as being incapable of carrying on a normal married life. The other party to the marriage is therefore allowed to petition for the nullity of the marriage. Once it is shown that the person suffered from some mental deficiency at the time of marriage, the court would not embark on an assessment of the extent of the derangement. The burden of proving that a party was insane at the time of the marriage lies on the party asserting it. A marriage will however, not be declared voidable at the petition of the party suffering from mental deficiency or epilepsy. See Section 33(b) Matrimonial Causes Act, 1970.

3.4 **Venereal Disease**

A marriage is voidable where at the time of its celebration either party was suffering from a venereal disease in a communicable way. If it cannot be shown that the party in question was suffering from the disease at the time of marriage, the disease will not constitute a ground for nullity. The party alleging the venereal disease may prove it in various ways including the calling for medical evidence. If a spouse proves that he or she is suffering from a venereal disease and that he or she had not had intercourse with any other person, a rebuttable presumption is raised that the venereal disease was contracted from the other source. If it cannot be proved that the party in question was suffering from the disease at the time of the marriage, the disease will not constitute a ground for nullity. However, subject to the two years rule, it may constitute a ground for divorce on the basis of adultery.

3.5 Pregnancy of the Wife by a Person Other than the Husband

If at the time the marriage was celebrated, the wife was pregnant by a person other than the husband, the wife cannot obtain a decree of nullity on the ground of her pregnancy. The court will refuse to make the decree if the petitioner had knowledge of the pregnancy at the time of the marriage as that would amount to approbation of the fact. The conduct of the petitioner since the marriage may be such as to stop him from petitioning the court for relief where he obtained knowledge of the pregnancy after the marriage and approved or condoned it.

In *Smith v Smith* (1947) 2 ALLER 741, the court of appeal considered a similar provision in the English Matrimonial Act 1937. The parties were married on 7 July, 1945; from 13 September 1944 to 7 July 1945, the marriage having been duly consummated, the husband returned to Germany. In Sept., 1945 the husband received a letter from his wife telling him of her pregnancy, and he was satisfied that he was responsible for it. He was demobilised in January 1946, and on 3 February of the same year he went to live with his wife. On 8 February the child was born – exactly seven months after the marriage. The husband made inquiries and discovered that the child was a full-term child, that is, that it had been born 9 months after intercourse. He subsequently had intercourse with his wife on 25 February.

The court held that the marriage by the husband at the time of the marriage, the wife was pregnant by another man was not a condition precedent to the operation of the provision. He did not have to be positively convinced of the existence of the fact. It was sufficient to show he possessed knowledge of the facts from which a reasonable person would have drawn the conclusion that the respondent had been pregnant by some third person and that with knowledge of those facts, he nevertheless had sexual intercourse with the wife. Moreover, since the husband's suspicion was aroused when the child was born, and he had made enquiries which confirmed that suspicion, it was held that the provision barred him from obtaining a relief, as he had had sexual intercourse with the wife after the suspicion was confirmed.

No decree of nullifying can be made in any of the above stated grounds unless the court is satisfied that:

- a. The petitioner was at the time of the marriage ignorant of the facts constituting the ground. If he had knowledge at the time of the marriage, he would be said to have approbated the disease or conduct of the other spouse.

- b. The petition was filed not later than twelve months after the date of the marriage
- c. Marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the grounds.

3.6 Consanguinity and Affinity

A marriage celebrated after the commencement of the Act will be void if the parties were at the time of the marriage, within the prohibited degrees of consanguinity and affinity. A marriage contracted before the Act came into force may be voidable on the ground of consanguinity and affinity only if one of the parties was at the time of its celebration within the prohibited degrees prescribed by the Act. See *Rosanwo V. Rosanwo* (1961) WNLR 287

3.7 Effect of The Decree of Nullity

A void marriage does not need a court decree to bring it to an end because the marriage never existed. Where a decree of nullity is granted in respect of a void marriage it is merely a declaratory of an existing fact. It is noteworthy that the Act has no retrospective effect.

3.8 Conflict of Laws

The validity or invalidity of a marriage will not be affected or determined by any provision of the Matrimonial Causes Act where it would not be in accordance with the rules of private international law to apply such provision to that marriage. Consequently, the nullity provisions of the Act are applied subject to the conflict of law rules.

4.0 CONCLUSION

Where a couple has celebrated a valid marriage under the Act, it is possible for one of them to bring action for its annulment. That is to say, where at the time of the marriage:

- a. either party to the marriage is incapable of consummating the marriage
- b. either party to the marriage is of unsound mind, mentally defective subject to recurrent attacks of insanity or epilepsy
- c. contracted a venereal disease
- d. the wife was pregnant by a person other than the husband.

5.0 SUMMARY

This unit has considered the following:

the grounds upon which a marriage can be made voidable
 the grounds of nullity of marriage
 the conflict of law rules in private international law
 the effects of the decree of nullity on a marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. Pregnancy of the wife by a third person other than the husband is a conclusive ground to nullify of a marriage. Discuss.
2. Extral marital intercourse with a third party before the marriage normally affects the validity of marriage. Discuss.
- 3(a) Define impotence in one sentence
- (b) When is a marriage voidable on the ground of impotence?

7.0 REFERENCES/FURTHER READING

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UNIT 6 INVALID MARRIAGES UNDER CUSTOMARY LAW

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Void Marriage
 - 3.2 Voidable Marriage
 - 3.3 Irregular Marriage
 - 3.4 Inchoate Marriage
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

This unit deals with the rules which respectively apply to customary marriages entered into before and after the coming into operation of the Matrimonial Causes Act in 1970-- the rules which apply in the case where a civil marriage is concluded by a spouse who is also a party to a customary marriage.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain how customary marriage can be invalid according to law
- give a synopsis of the legal requirement which apply to the conclusion of customary marriages.

3.0 MAIN CONTENT

There are circumstances in which a customary law marriage may be void or voidable.

3.1 Void Marriage

Customary law marriage may be void under the following circumstances:

A. Parental Consent

Consent is an essential requirement of a valid customary law marriage. Absence of such may make the customary law marriage void because there will be no valid arrangement for the payment or waiver of bride-price. In the absence of consent, there can be a proper “giving away of the bride”

B. Prohibited Degrees of Consanguinity and Affinity

A marriage between persons related by blood is prohibited. Marriage between persons within the prohibited degrees of relationship is void and may, in addition, constitute an abomination.

C. Non Payment of Bride Price

The bride price is an essential concealment of a customary law marriage. Consequently, failure to make the customary payment, except where it is waived, makes the marriage void. The same position holds for marriage in Islamic law with the payment of *saduquat* or *dower*.

D. Customary Law Marriage By Non Nigerians

A Customary law marriage between a native of Nigeria and a non-native is void. It was held in the case of *Savage v Macfoy*(1909) Remers Gold coast Report 504 and *Fonseca v. Passman* (1958) WRNLR 41 that the marriage of a Yoruba girl to a Sierra Leonean and the marriage of an Effik girl to a Portuguese were void because the bride in each case was not subject to customary law.

SELF ASSESSMENT EXERCISE

Discuss the role of the bride price in customary law marriage.

E. Marriage Under Maliki Law

In Maliki law, a marriage will be void if prohibited by reason of consanguinity affinity or fosterage. Also a marriage which is contracted for a specific period (*mutah*) or one based on hire (*muwakicat*) is void. A void marriage has no legal effect in Islamic law and the children of it are illegitimate.

3.2 Voidable Marriage

In a child marriage, where a party to the marriage is an infant the consent of the parents is enough for the marriage. The infant is however free to confirm or void the marriage so contracted on the attainment of maturity. An infant girl may on reaching the age of puberty, refuse to be a party to the marriage and her parents are obliged to refund the bride price to the husband.

3.3 Irregular Marriage

Under the Maliki School of Islamic Law, a Moslem cannot be lawfully married to more than 4 wives at the same time. If he marries a fifth wife where there are four subsisting marriages, the marriage is not void but irregular. An irregular marriage is unlawful but this is relative or temporal. The marriage can be regularised by the man by divorcing one of his 4 wives. An irregular marriage is a hybrid being neither valid nor void.

3.4 Inchoate Marriage

The aspect of giving away of the bride in a customary marriage is one of the essential elements of a valid customary law marriage. Failure to give away the bride prevents the completion of a valid marriage. In RE: Intended Marriage of Beckley and Abiodun (1943) 17NLR 59, Beckley and Miss Alade were engaged to be married in Lagos. Later Beckley left for Jos, and while there, authorised his father to pay the bride price or perform the *idana* ceremony on his behalf. Meanwhile, Beckley met another girl at Jos and they decided to marry each other. He gave the necessary notice and his father filed a caveat on the ground that the *idana* ceremony constituted a marriage with Miss Alade. It was held that the performance of the *idana* ceremony without the formal “giving away” of the bride did not constitute a valid marriage.

4.0 CONCLUSION

We have discussed the legal requirement of a valid customary marriage and the consequences of not fueling the requirement that leads to the marriage being void or voidable. i.e. the marriage must be negotiated and entered into or celebrated in accordance with customary law:

bride price is also customarily paid (or delivered)
the spouses must not be within the prohibited degrees of consanguinity. If either of the spouses is a minor his or her parent or legal guardian must consent to the marriage. A breach of any of the above stated formal requirement of customary marriage can render it void or voidable.

5.0 SUMMARY

This unit has taught the following:

Customary marriage is invalid if some conditions precedent i.e. payment of bride price, giving away, consent etc are satisfied.

The legal requirement of a valid customary marriage

Requirements for concluding a customary law marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. Briefly set out the legal requirements for a customary marriage.
2. Discuss the term “irregular marriage” under the Maliki School of thought i.e. Islamic Law marriage.
3. Briefly discuss void customary marriages
4. Under what condition can a customary law marriage be voidable? Discuss.

7.0 REFERENCES/FURTHER READING

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MODULE 3

Unit 1 Legal Effects of Marriage

Unit 2	Legal Effects of Marriage (Continued)
Unit 3	Legal Effects of Marriages (Continued)
Unit 4	Jurisdiction in Statutory Marriages
Unit 5	Jurisdiction in Customary Law Marriages

UNIT 1 LEGAL EFFECTS OF MARRIAGE

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Invariable and Variable Consequences of Marriage
3.1.1	Invariable Consequences of Marriage
3.1.2	Variable Consequences of Marriage
3.2	Consortium
3.3	Sexual Intercourse
3.4	Enticement and Habouring
3.5	Loss of Right to Consortium
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

1.0 INTRODUCTION

The previous units of this study showed how a valid engagement and a valid marriage come into existence. They also showed that a marriage is void or voidable if the prescribed requirements are not met. You must have learned how a valid marriage comes into existence. The present unit deals with the consequences of a valid marriage. The consequences of a marriage can be divided into variable and invariable consequences.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- distinguish between the variable and invariable consequences of marriage
- list the invariable consequences of marriage
- explain what each invariable consequence means
- explain how marriage affects the status of the spouses.

3.0 MAIN CONTENT

Statutory marriage confers on the husband and wife rights and obligations that are peculiar to persons who have acquired a status. The

rights and obligations, relate to consortium, maintenance, property and other civil matters

3.1 Invariable and Variable Consequences of Marriage

3.1.1 Invariable Consequences of Marriage

These are the consequences of marriage which come into being automatically by operation of the law and which cannot be excluded by the parties to the marriage. These consequences mainly concern the person of the spouses e.g. “Tade married Seun. As a result of the conclusion the marriage, Tade and Seun both gain the status of being married”. The parties can do nothing about this change of status of being married.

3.1.2 Variable Consequences of Marriage

These are consequences of marriage which can be agreed upon and/or excluded before hand by the parties to the marriage. These consequences mainly affect the estates of the spouses and the control they have in this regard.

At marriage, a wife may use her husband’s surname or in some cases may not due to professional and other reasons. See *Re fry* (1945) Ch 348. The change of name by a married woman is effected by custom. There is no legal obligation to change her name to that of her husband on marriage. The name taken by a woman at marriage may be retained by her even after the marriage has been brought to an end either by divorce or death of the husband as was held in *Frendall v Godsmith* (1877) 2 PD 263, 264. A husband has no right to stop his divorced wife from using his name unless she is doing so for the purpose of defrauding him or others.

3.2 Consortium : Omnis Vital

At marriage the spouses owe each other a number of duties which are collectively referred to as consortium. Each spouse has the right to the other’s consortium. Consortium can be described as the “living together as husband and wife with all the incidents that flow from the relationship”. Consortium is a name for what a spouse enjoys by virtue of a bundle of rights, some of which are hardly capable of precise definition. The duties which spouses owe each other in their domestic life are not fixed. They vary according to the particular circumstances of each marriage.

SELF ASSESSMENT EXERCISE 1

Distinguish between the invariable and variable consequences of marriage.

3.3 Sexual Intercourse

The parties owe each other the duty to consummate their marriage. Failure to do so arising from the impotence of a spouse may constitute a ground for nullity as provided in section 5(7) (a) Matrimonial Causes Act. The duty to have mutual sexual intercourse does not terminate with the consummation of the marriage. It continues for the duration of the marriage. Impotence, which is subsequent to the consummation, does not constitute a ground for nullity. A spouse while under the duty to have sexual relation is not bound to submit to excessive sexual demands of the other spouse which may be detrimental to his or her health. If the sexual demands or the willful refusal of one party to have intercourse injures the health of the other, such conduct may be an evidence of the irretrievable breakdown of the marriage under Section 15(2)(c) of the Matrimonial Causes Act. Marriage itself denotes consent of the spouses to sexual relations therefore a husband cannot be guilty of raping his wife. However, if the husband in the exercise of his right to have intercourse uses force or violence, he may be guilty of wounding or causing actual bodily harm to the wife.

3.4 Enticement and Harboursing

Enticement occurs when a third party without just cause persuades a wife to live apart from her husband. As was stated by Green LJ in *Place V Searle* (1932)32 KB 487 and adopted in several other cases by the West Africa Court of Appeal and Nigerian Courts:

It is the duty of the wife to reside and consort with her husband. This is a duty which she owes to him and a person who tempts and entices her to violate this duty commits a wrong towards the husband for which he is entitled to recover damages unless the person who harboured her acted from principles of humanity to protect her from her husband's ill-treatment in which case no action can be maintained even though it should turn out that the wife's allegation was unfounded.

Harboursing on the other hand occurs if after the wife has been enticed or persuaded to leave her husband, she is maintained and encouraged to continue to do so by the enticer.

The injury done the husband in either case is the loss of the wife's consortium, that is, the association between husband and wife which embraces companionship, love, affection, comfort, mutual services and

sexual intercourse. In order to succeed, the plaintiff must prove that it was the defendant's acts of enticement which caused his wife to cease cohabiting and consortium with him. There must therefore be a positive and unambiguous act on the part of the defendant which resulted in the wife leaving her husband.

Thus, the husband after celebration of a marriage is entitled to the consortium of his wife and therefore has a right of action in tort against anyone who lures her away from him or harbours her after she has left the home. The wife on her part is entitled to the protection of her husband and the provision of the necessaries of life. She is therefore entitled to sue anyone through whose act her husband suffers death or injury which incapacitates him from performing the above stated function.

In *Roland Krifa v Magi Gbodo*, Suit No W/24/1969, the plaintiff claimed against the defendant £600 being special and general damages suffered by him when the defendant enticed away and harboured his wife, Florence, against his will.

SELF ASSESSMENT EXERCISE 2

Describe the concept of consortium.

3.5 Loss of Right to Consortium

The right of a spouse to the consortium of the other may be lost if

1. The spouses mutually consent to live apart. Such agreement may be in a formal document known as a **separation of consortium**.
2. An order to judicial separation granted by a court of competent jurisdiction dispenses with one of the most fundamental aspects of consortium which is co-habitation. It relieves the spouses of the obligation to cohabit.

4.0 CONCLUSION

This unit has considered the legal consequences of marriage which can be agreed upon by the parties and the others that come into being automatically by operation of law and which cannot be excluded by the parties to the marriage.

5.0 SUMMARY

This unit has taught:

How to distinguish between the variable and invariable consequences of marriage

What the invariable consequences of marriage are

The invariable consequences of marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. What does the status of being married involve?
2. List the invariable consequences of marriage.
3. Distinguish between the invariable and the variable consequences of marriage.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigerian Family Law*. Lagos: Malthouse Press Limited.

Aderibigbe, Remi. *Family Law in Nigeria*, Lagos: Codes Publishing.

Nwogugu, E. I(1974). *Family Law in Nigeria*. Enugu: Heinekens Publications.

Matrimonial Causes Act, 2004.

1999 Constitution of Nigeria.

UNIT 2 LEGAL EFFECTS OF MARRIAGE (CONTINUED)

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Legal Effects of Marriage
 - 3.1.1 Contractual Relations between Spouses

- 3.1.2 Wife's Authority to Pledge Husband's Credit
- 3.2 Cohabitation
- 3.3 Torts
- 3.4 Husband and Wife in Criminal Law
- 3.5 Mutual Defence
- 3.6 Defence of Property
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The previous units of this study show how a valid engagement and a valid marriage come into existence. They also show that a marriage is void or voidable if the prescribed requirements are not met. We have also considered how a valid marriage comes into existence. The present study unit deals with the consequences of a valid marriage. The consequences of a marriage can be divided into variable and invariable consequences.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- distinguish between the variable and invariable consequences of marriage
- list the invariable consequences of marriage
- explain what each invariable consequence means
- explain how marriage affects the status of the spouses.

3.0 MAIN CONTENT

3.1 Legal Effects of Marriage

3.1.1 Contractual Relations between Spouses

At Common Law a wife has no contractual capacity, in relation to third parties. This was due mainly to the principle of the unity of husband and wife and to the fact that a wife could not own her own separate property apart from the husband. Some of the effects of this were that ante-

nuptial contracts between a husband and wife became void on their marriage. They could not enter into contracts with each other after marriage and the woman could not be sued in contract without her husband being joined. This position was radically altered by the Marriage (Women's Property) Act of 1882, which applies to all the Northern and Eastern States of Nigeria. By the Act, (Sections 1 and 12) a woman was given the same contractual capacity as a man and she could enter into valid contract with anyone.

3.1.2 The Wife's Authority to Pledge Husband's Credit

In law, there is the presumption that a wife is an agent of the husband and has the authority to pledge his credit for necessaries in so far as the article falls fairly within the domestic department which is ordinarily confined to the management of the wife. Food item is an obvious example. Since the wife's authority is a presumed one, it is rebuttable by evidence to the contrary. If a wife really contracted on her own behalf, the husband will not be liable as principal. Also if the wife has been expressly forbidden to pledge her husband's credit, he will not be liable.

SELF ASSESSMENT EXERCISE 1

Under what circumstances may a wife pledge her husband's credit?

3.2 Cohabitation

One of the primary incidents of consortium is the duty of the spouses to cohabit. This duty is subject to the circumstances of the parties. Cohabitation does not necessarily imply that the husband and wife are living together physically under the same roof. *Chwukwuma v Chwukwuma* (1996) 1NWLR 543.

They may be living apart by mutual consent because of the nature of their employment, education or business.

Withdrawal from cohabitation without consent may constitute the matrimonial offence of desertion which may arise either from physical withdrawal from the matrimonial home or a general withdrawal from cohabitation even while living under the same roof. See *Pulford v Pulford* (1923) P18.

3.3 Torts

With regard to torts, the law is uniform throughout the country. No husband or wife can sue the other for a tort. However, a married woman is entitled to bring any action against anyone, including her husband for

the protection and security of her property as if she was *famine sole*. Thus a wife can sue the husband for the recovery of her personal property detained by him. Thus in the case of *Asomugha v. Asomugha* (Suit No HD/102/72 Lagos High Court), the husband had instituted a divorce suit against the wife from whom he was living separately. He brought an application for an order for the release to him of his personal effects which were still in the matrimonial home. These included lecture notes, books, clothes shoes, wig and gown, certificate and passport. The court by Odeanya J (as he then was) held that in spite of the general rule under the Married Women (Property Act) that spouses could not sue each other, by the operation of Section 12 of the Act, the wife could sue the husband for the recovery of her personal property, whilst by section 17, the husband could make the same application. The position is however different with regards to third parties. A married woman can sue and be sued by a third party as if she were *famine sole*.

SELF ASSESSEMENT EXERCISE 2

Must a wife assume her husband's name?

3.4 Husband and Wife in Criminal Law

A wife is not be criminally responsible for an act which she is actually compelled by her husband to do in his presence provided such an act is not an offence punishable by death or one in which the Criminal Code applies. Also a wife does not become an accessory after the fact by assisting her husband to escape punishment. Similarly the husband is not guilty by giving the wife similar assistance. A husband and wife, being one in law cannot be criminally liable for conspiring between themselves alone for the same reason. They cannot be guilty of speaking with each other. Communication between husband and wife is privileged. A spouse cannot be compelled to disclose any communication made to him or her by the other spouse during the marriage. By these provisions, the law ensures that spouses can confide in each other. Where a spouse is charged under specific offences as indicated under the evidence act, the other spouse shall be a competent and compellable witness for the prosecution or defence without the consent of the accused spouse.

3.5 Mutual Defence

The law confers on every individual the right to use reasonable force as it is necessary to defend himself against an assault. It is lawful for a person to use force in self defence against an assault and any other person acting in good faith may lawfully use force in aiding the person assaulted. A spouse may use such force as is necessary in aiding or

defending the other spouse who is assaulted. A spouse may use force if necessary in order to resist actual or unlawful violence threatened to the other spouse in his presence.

3.6 Defence of Property

While still living together, neither party can incur any criminal responsibility for interfering with the property of the other. A party can freely dispose of his or her individually owned property. Neither party can be criminally held responsible for any offence committed against the property of the other unless the guilty party was in desertion or about to desert the other-- Section 36 Criminal Code. See also *Egunjobi v Egunjobi* (1974) ECNLR 552.

However a husband cannot sue his wife in tort for the protection of his property. Special statutory provisions exist for the settlement of disputes between husband and wife as to the ownership or possession of property. For this, see Section 17 Married Women's Property Law and also *Asomugha v Asomugha* CCHC/12/72 at 91.

SELF ASSESSMENT EXERCISE 3

What actions does our law permit in cases where a third party interferes with a marriage relationship?

4.0 CONCLUSION

This unit has considered the legal consequences of marriage; the legal consequences of marriage which can be agreed upon by the parties and the others that come into being automatically by operation of law and which cannot be excluded by the parties to the marriage. Suffice it to say that it is not possible in this course to exhaust the topic by what you have learnt in this unit.

5.0 SUMMARY

This unit teaches:

- the differences between the variable and invariable consequences of marriage
- variable consequences of marriage
- invariable consequences of marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. Briefly explain what the spouses' right to occupy the matrimonial home entails.
2. May one spouse unilaterally and without a court order revoke the other spouse's capacity to purchase household necessities? Discuss.
3. Discuss what is meant by the concept "Consortium Omnis vitae"

7.0 REFERENCES/FURTHER READING

Sagay, I. (2003). *Family Law in Nigeria, Principle, Cases, Statute and Commentaries*. Lagos: Malthouse Publishers.

Nwogwugu (2001). *Family Law in Nigeria*. Lagos: Heineken Publishers.

Aderibigbe, Remi (2004). *Family Law in Nigeria*. Lagos: Codes Publishers.

UNIT 3 LEGAL EFFECTS OF MARRIAGE (CONTINUED)

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Citizenship
 - 3.2 Marriage Celebrated Abroad
 - 3.3 Customary Law Marriage
- 4.0 Conclusion
- 5.0 Summary

- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

This study unit deals with the consequences of a valid marriage. The consequences of a marriage can be divided into variable and invariable consequences.

2.0 OBJETIVES

At the end of this unit you should be able to:

- distinguish between the variable and invariable consequence of marriage
- list the invariable consequences of marriage
- explain what each invariable consequences means
- explain how marriage affect the status of the spouses.

3.0 MAIN CONTENT

3.1 Citizenship

Under the 1999 Constitution of the Federal Republic of Nigeria, a foreigner married to a Nigerian citizen may acquire nationality by registration or naturalisation. A female Nigeria does not lose her Nigerian citizenship merely by marriage to a foreigner but if she by that act acquires a foreign citizenship, she automatically loses her Nigerian citizenship. Whether a female citizen married to foreigner as a result of the marriage acquires her husband's nationality or not, will depend on the citizenship laws of his country.

3.2 Marriage Celebrated Abroad

The Marriage Act does not provide expressly or by implication for the validity or recognition of monogamous marriages celebrated abroad. Nigerian courts in this wise fall back on contract law rules. By these rules, the Nigerian courts will recognise a monogamous marriage celebrated abroad if it complies with the law of the place of its celebration as to form and if each of the parties possesses the capacity to marry under the law of his or her antenuptical domicile. A marriage celebrated abroad will be treated as monogamous here if it is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.

3.3 Customary Law Marriage

i. Consortium

The spouses of a customary law marriage are entitled to each other's consortium. Customary law requires the cohabitation of the spouses. Each of the spouses is entitled to the company of each other. Under customary law each spouse owes the other a duty to submit to the other's reasonable sexual demands.

SELF ASSESSMENT EXERCISE 1

When does the duty of support arise between spouses?

ii. Mutual Protection

Customary law recognises the right of mutual protection by the spouses to a customary law marriage. Each spouse is entitled to the assistance of the other in the case of danger to life or limb.

iii. Remedies for Interference with Consortium

Unlike English Law, Customary Law has not developed a full range of remedies for interference with the right of consortium. For example there is no general right of action for damages for wrongfully inducing a spouse to leave the other. If however, the inducement involves or is accompanied by adultery, damages may be obtained in customary law for adultery. It is important to note that enticement is a common law concept. The tort of enticement is unknown to customary law and Customary courts have no power to administer common law which includes torts.

iv. Harboursing a Runaway Wife

Under customary law in Nigeria, a husband has a right of action for the recovery of his wife from any person who harbours her without just cause. The right of action may be exercised against her parents' relations or any other person who harbours her. In *Erurhobare v. Orebise* (1971)1 UILR 33, the plaintiff's wife, Omatre, was harboured without just cause and against the husband's wish by her parents, the defendants. The plaintiff brought an action against the defendants at the Customary Court in Sapele judicial division for the return of his wife. The court found in favour of the plaintiff and ordered the defendants to return the plaintiff's wife within two weeks of the date of the order of court. On appeal, Eboh J, upheld the findings of the lower court as being in consonance with the local and applicable customary law.

v. Damages for Adultery

One of the remedies developed by customary law for interference with consortium is in respect of the commission of adultery with a married woman. In some parts of Nigeria, customary law confers on the husband a right of action for damages against a third party who commits adultery with his wife. The exercise of the right is on the existence of a valid customary law marriage. However, the wife has no correspondent right of action.

In some parts of Nigeria, rather than attract damages, the commission of adultery may constitute a criminal offence. Under Section 387 of the Penal Code, the commission of adultery by a man may be punished by imprisonment. It is to be noted that the section only applies where the adultery is committed by a person subject to a system of customary law under which adultery constitutes a crime.

In *Esharetori v Okere* Suit No. w/29A/66(unreported) both the husband and wife, who were from Agbarho in Ugheli area of Bendel State, were married under customary law. The defendant committed adultery with the wife of the plaintiff. Obaseki, J, held on appeal, that the defendant was liable under customary law to pay damages to the plaintiff for the adultery.

SELF ASSESSMENT EXERCISE 2

The law of enticement is not well developed at customary law marriage level in Nigeria. Discuss.

4.0 CONCLUSION

This unit has examined some situations in which a court may be called upon to adjudicate on a matter that is outside the purview of the customary law but within the purview of the common law of England. It is only through law reforms that our customary laws can develop in this respect.

5.0 SUMMARY

In this unit we discussed:

- The validity of marriage contracted in Nigeria and abroad
- Foreign marriages
- Conflicts of law in marriage
- The legal effects of cohabitation

Consortium in customary law marriages
Remedies for acts against consortium

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the remedies for adultery under customary law in Nigeria?
2. Does a customary court have jurisdiction over the offence of enticement in a customary law marriage in Nigeria? Discuss with decided cases.

7.0 REFERENCES/FURTHER READING

Penal Code Act

Criminal Code Act

Matrimonial Causes Act, 2004.

The 1999 Constitution of the Federal Republic of Nigeria

Nwogugu: (1974). *Family Law in Nigeria*. Ibadan: Heinemann Educational Books.

UNIT 4 JURISDICTION IN STATUTORY MARRIAGES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Jurisdiction
 - 3.2 Jurisdiction in Matrimonial Causes Matters
 - 3.3 Domicile
 - 3.4 Domicile of a Married Woman
 - 3.5 Domicile of Choice
 - 3.6 Jurisdiction Based on Domicile
 - 3.7 Jurisdiction Based on Residence
 - 3.8 Law to be Applied
 - 3.9 Reconciliation
4. Conclusion

5. Summary
6. Tutor-Marked Assignment
7. References/Further Reading

1.0 INTRODUCTION

By the cession of the colony of Lagos to the British Crown in 1861, matrimonial causes in Nigeria were regulated by English Law. These statutes were meant primarily to meet the English needs. The vacuum created by the Nigeria Law was met by the Matrimonial Causes Act of 1970.

The 1970 Act was the first step in the quest for an indigenous law on matrimonial causes, fashioned specifically to reflect our social and economic values and suitable for solving our domestic problems.

The 1970 Act defines Matrimonial Causes to include proceedings for a decree of dissolution of marriage, nullity of marriage judicial separation restitution of conjugal rights, or jactation of marriage.

2.0 OBJECTIVES

At the end of this unit you should be to:

- define the concept of jurisdiction and distinguish it from judicial powers
- explain the requirements of jurisdiction as they affect matrimonial causes
- explain the concept “domicile” and describe how it affects matrimonial causes
- give an explanation of how family law developed into the set of legal rules we have today.

3.0 MAIN CONTENT

3.1 Jurisdiction

Jurisdiction is a word that bears diverse meanings depending on the purpose and nature of the enquiry at hand. It is a technical word that has been variously used and abused. The *Shorter Oxford Dictionary* defines jurisdiction as (i) administration of justice, exercise of judicial authority or of the functions of a judge or legal tribunal, legal authority or power (ii) power or authority as general, administration, control (iii) the range of judicial or administrative power, the territory over which such power extends (iv) a judicial organisation, a judicative court or series of courts of justice. “Words and Phrases Legally Defined” says “by jurisdiction is

meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited.

Bouviere's Law Dictionary sees jurisdiction as the authority by which judicial officers take cognisance of and decide cases; the power to hear and determine a cause. The test for jurisdiction of a court is whether or not it has the power to enter upon the inquiry and not whether its conclusion in the course of it was wrong or right.

These definitions were adopted by the courts in the case of *Attorney General of Lagos State v Dosumu* (1989) 3 NWLR (pt 11) 552. Obaseki JSC defined jurisdiction as:

dignity which a man has by power to do justice in a cause of complaint made before him, (b) in its narrow sense, the limits which are imposed upon the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to (i) the subject matter of the issue or (ii) the persons between whom the issue is joined or (iii) the kind of relief sought (c) in its wider sense, the way in which the court will exercise the power to hear and determine the issues which fall within its jurisdiction or as to circumstances in which it will grant a particular kind of relief which it has jurisdiction to grant including its settled practice to refuse to exercise such power or to grant such relief in particular circumstances.

3.2 Jurisdiction in Matrimonial Causes Matters

Under the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government has exclusive legislative jurisdiction in all matters relating to the formation, annulment and dissolution of marriage other than marriage under Islamic law and customary law including matrimonial cause relating thereto. Only the Federal Government therefore can legislate on matters connected with statutory marriage in Nigeria. The Federal Government by statute confers jurisdiction in divorce and matrimonial causes on State High Courts. The jurisdiction of the courts to entertain proceedings in matrimonial causes is based largely on domicile as was decided in the case of *Shyngle v. Shyngle* (1923) 4 NLR 94, or residence of the parties. If a court lacks

jurisdiction, the parties to the suit cannot by consent or otherwise confer jurisdiction on it.

3.3 Domicile

Domicile is the term that denotes a party's permanent home. It is distinct from nationality, which refers to the political entity to which one owes allegiance. A person can have only one domicile at any given point in time. He can acquire a new domicile only after he has abandoned the old one. Moreover, a person must always have a domicile, he cannot be without one.

SELF ASSESSMENT EXERCISE 1

Define the term "jurisdiction".

3.4 Domicile of Origin

At birth every person receives a domicile, which is his domicile of origin. A child takes the domicile of the father at the time the child was born. If the parents of a child are unknown, he takes the domicile of where he is found.

3.5 Domicile of a Married Woman

Upon marriage, a woman automatically acquires the domicile of her husband, while the marriage subsists. The woman cannot acquire a domicile of her own. Her dependent domicile changes automatically with that of the husband. If the marriage is void *ab initio* the woman will not acquire the husband's domicile because in law there is no marriage at all. She retains her last domicile, and can change it at will. On the other hand, where the marriage is voidable, being a valid and subsisting marriage until made void, the woman acquires the domicile of the husband. When the marriage is either nullified or terminated by death or divorce she ceases to depend on the husband.

SELF ASSESSMENT EXERCISE 2

Explain the concept domicile of origin.

3.6 Domicile of Choice

Since infants and married women have a domicile of dependence, they cannot change it or acquire an independent domicile as long as they retain their dependent status. However, the infant on attaining maturity or the married woman on the termination of the marriage, can acquire a domicile of choice. Excluding infants and married women, any person can change his domicile by acquiring a domicile of choice. To do so, the person must satisfy two conditions. He must establish residence in a new place and at the same time, have an intention to make it his permanent home. Neither residence nor the necessary intention alone is enough to found a new domicile. The two must operate concurrently. The domicile of origin remains effective until a new domicile of choice is acquired.

3.7 Jurisdiction Based on Domicile

Section 2(2) of the Matrimonial Causes Act 1970, provides that matrimonial causes – proceedings for a decree of dissolution of marriage, nullity of marriage, or judicial separation, or restitution of conjugal rights or jactation of marriage – may be instituted only by a person domiciled in Nigeria. For this purpose a person domiciled in any state of the Federation is domiciled in Nigeria. This rule may in some circumstances work hardship on married women. For instance, if she deserves to divorce her husband, she is compelled to follow him to the court of the country in which he has acquired a domicile. The husband has the opportunity of changing his domicile from time to time in order to avoid being divorced by his wife. He could claim to have abandoned any domicile he might be alleged to have.

To alleviate this difficulty, the Act presumes a deserted wife who is domiciled in Nigeria either immediately before her marriage or immediately before the desertion to be domiciled in Nigeria; thereby giving the courts jurisdiction under Section 2(2) of the Matrimonial Causes Act of 1970. There are two requirements of the provision. First, the married woman must be domiciled in Nigeria immediately preceding her marriage or immediately before the desertion. With regards to the latter, it was held in *Zanelli v. Zanelli* (1948) 64 TLR 566 that where an Italian who acquired an English domicile of choice deserted his wife by returning permanently to Italy, the wife was to be presumed to be domiciled in England immediately before the desertion. Secondly, the married woman who seeks the privilege of this provision must show that she is a deserted wife at the time she commences proceeding.

3.8 Jurisdiction Based on Residence

The Nigerian court will assume jurisdiction under the Act in respect only of a married woman if she is resident in Nigeria at the date of the

institution of the proceeding and has been so resident for the period of three years immediately preceding the date. In such a case, the woman is deemed to be domiciled in Nigeria.

3.9 Law to be Applied

Issues in matrimonial causes are contained in the Matrimonial Causes Act, 1970 though celebration of marriage is regulated by the Marriage Act. The Act applies exclusively to statutory marriages. The supremacy of the Act is established by Section 115(4) which provides that in case of inconsistency between the Act and any other Law, the Act “shall prevail and that Law shall be void to the extent of the inconsistency”.

3.10 Reconciliation

Section 11-14 of the Matrimonial Causes Act of 1970 clearly states the duty of the court in respect of reconciliation. The provision states that “the court before which a matrimonial proceeding is instituted is obliged to give consideration throughout the course of the suit to the possibility of reconciling the spouses, unless the case does not admit of such effort. If at anytime it appears to the judge either from the nature of the case and the evidence in the proceedings or from the attitude of the parties or their counsel that there is a reasonable possibility of reconciliation he may adjourn the proceeding. Such adjournment is for any of the following purposes:

- a. To afford the parties an opportunity of being reconciled.
- b. The judge may, with a view to effecting reconciliation, and with the consent of the parties interview them in chambers. The parties may be interviewed with or without counsel as the judge considers appropriate in any particular case.
- c. The judge may nominate a person of experience or training in marriage conciliation or in special circumstances, some other suitable person to endeavour, with the consent of the parties, to effect reconciliation. A marriage conciliator, before embarking on his function, must make and subscribe to oath of secrecy. The oath requires him not to disclose to any person any communication or admission made to him in that capacity except in so far as such disclosure is necessary for the proper discharge of his functions.

4.0 CONCLUSION

In this study unit we have discussed jurisdiction of courts under the Matrimonial Causes Act. Strictly speaking this unit forms part of the

previous study unit which dealt with legal requirements for a valid marriage. Jurisdiction in matrimonial causes is the foundation and the bedrock of adjudication in judicial matters.

5.0 SUMMARY

This study unit explains the following:

jurisdiction in matrimonial causes
legal requirements of jurisdiction
factors that determine jurisdiction in matrimonial causes matters
how these factors influence the concept of jurisdiction.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the term “domicile of origin”.
2. Define the term jurisdiction.
3. Discuss the factors that affect the jurisdiction of a court in matrimonial causes.
4. Discuss the domicile of a married woman under the Nigerian Law.

7.0 REFERENCES/FURTHER READING

Matrimonial Causes Act of 1970.

High Court Rules of Lagos State

The 1999 Nigeria Constitution

Nwogwugu: *Family Law in Nigeria*. (274) Ibadan: Heinemann Educational Books.

Sagay, I. (2003). *Family Law in Nigeria*. Lagos: Mathouse Publishers.

UNIT 5 JURISDICTION IN CUSTOMARY LAW MARRIAGE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Jurisdiction in Customary Law Marriages
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

It has been noted that the laws governing domestic relations are the Matrimonial Causes Act cap for statutory marriages and the various customary laws for customary marriages. Under the Matrimonial Causes Act, which is the principal legislation in matrimonial causes, jurisdiction is conferred on the High Courts of the states. Section 2 of

the Act which is on the jurisdiction of the court clearly provides as follows:

“... the Act in the High Court of any State of the federation and for that purpose the High Court of each state of the federation shall have jurisdiction to hear and determine;

a.) Matrimonial Causes instituted under the Act.”

2.0 OBJECTIVES

At the end of this unit you should be able to:

define the concept of jurisdiction of courts in customary law marriage

compare and contrast with jurisdiction in statutory marriages

explain the requirements of jurisdiction

explain how family law developed in this area of customary law as we have it today.

3.0 MAIN CONTENT

3.1 Jurisdiction

All customary courts in Nigeria possess original and unlimited jurisdiction in matrimonial causes and matters between persons married under customary law or connected with a union contracted under customary law.

On the other hand, state High Courts and Magistrate Courts do not as a general rule possess original jurisdiction in matrimonial causes arising under customary law. The statute establishing the High Courts and the Magistrate Courts clearly provides that the High Courts shall not exercise original jurisdiction in any matter which is subject to the jurisdiction of a customary court relating to marriage and family status. However, there are certain instances in which the High Court or Magistrate Court may assume original jurisdiction.

1. The Governor of a state may direct it.
2. A suit may be transferred from a Customary Court to a High Court or Magistrate Court.

3. In an unusual case where the Customary Court is abolished e.g. during the civil war the original jurisdiction may be conferred on the High Court.
4. Where a Customary Court is not in existence, the original jurisdiction of the High Court on customary law matters will be reviewed.
5. When a claim is within the jurisdiction of the court it would not be precluded from adjudication on it merely because in the course of the exercise of its jurisdiction it becomes necessary to make some causal or coincidental inquiry into any of the matters within the exclusive provision.

In *Adeyemi v. Opeyori* (1976) 9 – 10 sc 31, the plaintiff claimed title to the land in dispute. Counsel for the defendant admitted that the land in dispute is Emilia family land. The only question left to be determined by the court was whether or not the plaintiffs were members of Emilia family – an issue which appeared to relate to family status. The submissions of the counsel on both sides revolved on whether the question of family status was an incidental or fundamental issue to be caught within the prohibition against the High Court exercising jurisdiction in matrimonial causes under customary law. Fakayode J., (as he then was) held that the issue was a fundamental one and struck out the case for want of jurisdiction. The then Western Court of Appeal upheld the judgment below by the majority decision. On further appeal to the Supreme Court the court allowed the appeal. It observed that it was clear from the above stated provision that the High Court of the former Western State was precluded from exercising original jurisdiction in all matters which were subject to the jurisdiction of a Customary Court and relate to “marriage family status, guardianship of property on death”. It noted however, that where a claim is clearly within the substantive enactment (i.e. within the terms of the High Court Act.), the High Court was not precluded from adjudication thereon.

Appeals lie from the Customary Court or Area Courts in the first instance, to Customary Courts of Appeal or in the Northern states to the Upper Area Courts respectively. These courts have both original and appellate jurisdiction in all matters relating to matrimonial causes under customary law. In some states in Nigeria, appeals may lie from the Customary Courts to the Magistrate courts or the High Court.

SELF ASSESSMENT EXERCISE

State the conditions under which a High Court of a state may have jurisdiction in customary law matters.

The Customary Courts administer the native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties. Such customary law is applicable in Section 1 as far as it is neither repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any written law for the time being in force. In the Northern states, customary law includes Moslem law as notified by the custom of each locality.

4.0 CONCLUSION

In the previous we dealt with statutory marriages and the laws that govern the jurisdiction of courts in matrimonial causes. This unit focused on the jurisdiction of the court in customary law marriages; the applicable law in Nigeria and the criteria employed in identifying which of the local customs is applicable; the principles that guide the acceptability of custom and practice for juridical enforcement. It is important also that we know how original jurisdiction on customary law matters could be conferred on a High Court or Magistrate Court.

5.0 SUMMARY

Generally, the question whether a customary law is applicable can be determined by examining the culture whether it is repugnant to natural justice, equity and good conscience, or whether it is in conflict with any written law that is in force at the material time. In this unit, we also considered the original jurisdiction of the Customary Court in customary law issues and how prevailing circumstances can offer original jurisdiction in the High Court or Magistrate Court.

6.0 TUTOR MARKED ASSIGNMENT

Enumerate the circumstances under which a High Court could be conformed with original jurisdiction in customary law matters.

7.0 REFERENCES/FURTHER READING

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MODULE 4

- Unit 1 Dissolution of Marriage (Statutory Marriage)
- Unit 2 Grounds for Divorce I
- Unit 3 Grounds for DivorceII
- Unit 4 Dissolution of Marriage under Customary Law

UNIT 1 Dissolution of Marriage (Statutory Marriage)

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Judicial Separation
 - 3.2 Grounds for Judicial Separation
 - 3.3 Bars and Defenses to Petition
 - 3.4 Effect of the Decree
 - 3.5 Divorce and Judicial Separation
 - 3.6 Discharge of Decree on Resumption of Co-habitation
 - 3.7 Petition for Judicial Separation

- 3.8 Dissolution of Marriage by Death
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

We have examined the legal consequences of marriage. This unit discusses the dissolution of marriage. It briefly sets out the way in which a marriage can be dissolved, namely by death of one or both spouses, nullification of a voidable marriage and divorce.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- state the ways by which marriages can be dissolved
- explain what judicial separation means and how it works
- explain what extra – judicial separation means and how it works
- explain briefly the effect of death in a marriage.

3.0 MAIN CONTENT

The atonement of a marriage is a way in which a marriage can be dissolved. Section 30(1) and (2) of the Matrimonia Causes Act provides that except where divorce proceedings are based on the facts of willful and persistent refusal to consummate, adultery, commission of rape, sodomy or bestiality, no proceedings for divorce may be instituted within 2 years of a marriage without leave of court. The rationale for this rule is not only to deter people from rushing into marriage but also to prevent them from rushing out of marriage as soon as they discover that their marriage was not what they expected.

However, Section 30(3) of section 30 prescribes the circumstances in which the court may grant leave as follows: the court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage. In *Fay v Fay* (1982) 3WLR206 Lord Scarman who delivered the unanimous opinion of the house observed that: “It is not possible to define with any precision what is meant by ‘exceptional hardship or depravity’. It could mean hardship suffered by the applicant (or the respondent). It however, must be shown to be something out of the ordinary”.

The law places the primary responsibility for determining what is exceptional to the evidence adduced by the affidavit of the applicant. An appeal court ought not to intervene in such assessment unless it could be shown that the judge was dearly wrong.

In order to enable the judge to exercise functions appropriately in this respect, there is need to include evidence as to the nature and extent of the applicant's suffering or the respondent's depravity; for example, in the former, evidence of ill – health, of nervous sensitivity or tension resulting in severe emotional or mental stress or breakdown.

It is important to observe that the leave of court under Section 30 (3) may be granted on either both arms of the sub section or on the basis of one of the two factors – exceptional hardship imposed on the applicants or the exceptional depravity on the part of the respondent. What constitutes exceptional hardship or depravity has been considered to be a matter of value judgment based on “prevailing standards of acceptable behaviour between spouses”. In *Akere V Akere* (1962) WNLR328, leave was sought on the grounds of exceptional depravity on the part of the respondent and exceptional hardship suffered by the applicant.

The respondent allegedly committed adultery during the period in question with three women one of whom the applicant understood to be the respondent's cousin. Other allegations included sexual demands when the applicant was in poor health and had just returned from hospital, physical violence, constant neglect and quarrelling; that the respondent infected the applicant with venereal disease and that he turned the applicant out of his home. The court decided *inter alia* that the case was one of exceptional hardship on the applicant and exceptional depravity on the part of the respondent.

An application under Section 30 of the act for leave to institute proceedings may be made *ex parte*. This must be supported by an affidavit which must verify the following:-

1. Particulars of the exceptional hardship that was imposed on the applicant by the respondent or particulars of the exceptional depravity on the part of the other party.
2. The ground upon which, if leave is granted, the applicant intends to petition for the decree.
3. Whether or not the applicant has made a previous application for leave and if so, the date, grounds on which and court to which the previous application was made and whether that application was granted.

4. Whether or not a child of the marriage is living and if so the name, date of birth and place of residence of the child.
5. Whether an attempt has been made to effect reconciliation between the parties.
6. Particulars of any other circumstances that may assist the court in determining whether there is a reasonable possibility of reconciliation between the parties before the expiration of the period of two years after the date of the marriage.

SELF ASSESSMENT EXERCISE 1

Describe the term “annulment of a statutory marriage”.

3.1 Judicial Separation

The high court has jurisdiction to grant a decree of judicial separation. Its jurisdiction, as in the case of a divorce, is based on the domicile of the parties.

3.2 Grounds for Judicial Separation

A decree of judiciary separation may be based on one or more of the facts and matters which may ground a petition for dissolution of marriage as specified in Section 15(2) and 16(1) of the Matrimonial Causes Acts, 1970. In *Aja V Aja* (1972) ECSCR 140, judicial separation was granted on the basis of adultery.

Also, the prohibition on the institution of the proceedings for a decree of divorce within two years of the date of the marriage except with the leave of court also applies to petition for judicial separation.

3.3 Bars and Defenses to Petition

All bars and defenses to a petition for divorce apply with equal force to a petition for judicial separation.

3.4 Effects of the Decree

A decree of judicial separation relieves the petitioner from obligation to co-habit with the other party to the marriage while the decree remains in operation. Consequently, while the decree is in force neither of the spouses can be in desertion. Furthermore, a husband who has intercourse

with his wife against her will during the same period may be guilty of rape. Apart from co-habitation, the decree does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage. Neither of the spouses is free, while the decree is in force, to remarry and all other aspects of married life remain intact.

3.5 Divorce and Judicial Separation

A decree of judicial separation is not a bar to either of the spouses subsequently petitioning for divorce on the same facts in which judicial separation was ordered. In most cases, the court may treat the decree of judicial separation as sufficient proof of the fact constituting the grounds in which that decree was made.

3.6 Discharge of Decree on Resumption of Co-habitation

The voluntary resumption of co-habitation by the spouses will bring a decree of judicial separation to an end. If after the making of a decree of judicial separation the parties voluntarily resume co-habitation, either party may apply for an order discharging the decree.

3.7 Petition for Judicial Separation

A petition for a decree of judicial separation shall be in accordance with form 6 of the Matrimonial Cause Act Rules 1983, and comply with the relevant rules of order V.

SELF ASSESSMENT EXERCISE 2

Distinguish between order for judicial separation and divorce form 6 of Matrimonial Causes Act.

3.8 Dissolution of Marriage by Death

The death of a wife terminates the marriage and all the legal consequences that flow from it. The joint estate is then dealt with by executors in terms of administration of estate laws. The executors pay all debts owed by the joint estate and claim all debts owed to the joint estate. They then give a list of the estate to the surviving spouse, the other half is given to the heirs of the deceased

4.0 CONCLUSION

We have examined about how a marriage can be annulled and the other alternatives to annulment of marriage, i.e. judicial separation, non judicial separation, and the consequences of judicial separation.

5.0 SUMMARY

This unit has explained:

Judicial separation

Extrajudicial separation and the effect on the subsisting marriage.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define the term “judicial separation”.
2. How can a decree of judicial separation be brought to an end?

7.0 REFERENCES/FURTHER READING

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UNIT 2 GROUNDS FOR DIVORCE I

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Wilful and Persistent Refusal to Consummate the Marriage
 - 3.2 Adultery and Intolerability
 - 3.2.1 Proof of Adultery
 - 3.2.2 Nature of Evidence
 - 3.2.3 The Birth of a Child
 - 3.2.4 Venereal Disease
 - 3.2.5 Co-habitation
 - 3.2.6 Intolerability
 - 3.2.7 Confession and Admission
 - 3.3 Respondent's Grave and Unbearable Conduct
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

In the previous study unit we referred to three ways by which a marriage can be dissolved. The first way, namely the death of one or both of the spouses, was discussed in the previous unit. You must familiarise yourself with that study unit before you proceed to the present study unit. We will discuss the third way by which a marriage can be dissolved, namely divorce. Firstly, we will look at the grounds for divorce which presently exist in law: irrevocable breakdown of the marriage, desertion, mental illness e.t.c.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- state the divorce law
- list the grounds for divorce which currently exist in our law
- explain in detail when a marriage can be considered as having broken down irrevocable
- explain whether the court has the discretion to refuse a divorce if one of the grounds for divorce is proved.

3.0 MAIN CONTENT

The law stipulates that either party to a marriage may petition for divorce upon the ground that the marriage has broken down irretrievably. The irretrievable breakdown of marriage is the sole ground for divorce. It follows that a petition for divorce which fails to work for the dissolution of the marriage on the ground that it has broken down irretrievably may not succeed.

The petitioner must provide facts the proof of which will enable the court to arrive at the conclusion that a breakdown of marriage has occurred. A court cannot conclude that a marriage has broken down and grant a decree of divorce unless one of these facts has been established.

In *Ezirim v Ezirim* Suit No FCA/L/56/78(unreported) February 6, 1981, the Court of Appeal, per Nnaemaka Agu, J.SC observed that; It is necessary to bear in mind the fact that although the Act (Matrimonial Causes Act) created only one ground for divorce, to with that the marriage has irretrievably broken down (see Section 15(1) of the Act), yet that the facts which may lead to the marriage breaking down irretrievably are categorised under sub-section (a) to (h) of Section 15 (2). Only those facts can suffice to found a petition for divorce. Section 15(2) then stipulates eight facts of proof each of which will enable the court to the conclusion that a breakdown of marriage has occurred.

3.1 Wilful and Persistent Refusal to Consummate the Marriage

Section 15(2) (a) of the Matrimonial Causes Act of 1970 provides that the proof of wilful and persistent refusal of a spouse to consummate the marriage will have a court hearing a divorce petition to decide that the marriage has broken down irretrievably. The application of the law depends on the interpretation of the phrase, “willful and persistent refusal”. It has been decided that “persistent” in this context is a word which implies continuity and seems to me to be somewhat analogous to the word “repeatedly” “willful” means in the context, the doing of something as a matter of conscious will.

In order to establish this fact there must have been a number of requests direct or implied and the lack of an opportunity to comply with such request is not necessarily the same as a refusal. It must be shown that the refusal was conscious, deliberate and continuous after repeated efforts by the petitioner aimed at consummation.

3.2 Adultery and Intolerability

By Section 15 (2) (b) of the Matrimonial Causes Act 1970, a court will come to the conclusion that a marriage has broken down irrevocably where, since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. For the petitioner to succeed on the ground of adultery under the Matrimonial Causes Act, he/she has to prove not merely the commission of adultery by the respondent but also that the petitioner finds it intolerable to live with the respondent. In addition to these facts, it has to be established that these facts occurred after the celebration of the marriage.

3.2.1 Proof of Adultery

Adultery may be defined as the voluntary sexual intercourse between a spouse and a third party of the opposite sex not being the husband or wife during the subsistence of the marriage. The element of freewill is fundamental to the concept of adultery. It has been held in *S v. S* (1962) (*Law Report*) p133; *Clarkson v. Clarkson* (1930)143 LT 773; *Hambury v. Hambury* (1982) (*Law Report*) p.222, that where an insane spouse engages with a third party, the M’Naghten rules apply to the finding of adultery. In that case, adultery cannot be established against an insane party if he does not know that the nature of his act is wrong. Where on the other hand, a spouse commits adultery while under the influence of alcohol or drugs so that he or she does not understand the nature and

consequence of the act, the position would be akin to insanity and adultery will be negated.

3.2.2 Nature of Evidence

Because of its very nature, it is rare to obtain clear evidence of the commission of adultery. Hence, adultery is usually inferred from the surrounding circumstances. In *Adeyemi v Adeyemi* (1969),² Act NLR18, the husband at night visited his wife who was living apart from him. His wife's bedroom was in darkness. As a result of his banging of the door, it opened and he found both the respondent and co-respondent inside. The wife was sitting on a bed with only a wrapper thrown carelessly around her body and the co-respondent's shirt was not properly tucked into his trousers. It was found that the circumstances in which the parties were found pointed conclusively to the commission of adultery.

SELF ASSESSMENT EXERCISE 1

Mention four grounds for divorce.

3.2.3 The Birth of a Child

The birth of a child for a man by a woman other than his legal wife will give rise to the inference that the man has committed adultery. The birth of a child by a wife during the marriage when the husband has no access constitutes evidence of the commission of adultery.

The birth of a child during the subsistence of a valid marriage between the spouses within 280 days after its dissolution is conclusive evidence of the child's legitimacy. A husband may prove adultery by a conclusive evidence of non access to the wife during the period the child could have been conceived. A spouse may not be compelled to give such evidence if it would show that the child was illegitimate.

3.2.4 Venereal Disease

Where a spouse suffers from venereal disease which has not been contracted from the other spouse, a presumption of adultery is raised although such presumption may be rebutted by proof that the disease was contracted other than by adultery.

3.2.5 Cohabitation

Adultery may be presumed from the general co-habitation of the respondent and co-respondent in the same house as husband and wife or

if they spent a night together in an hotel. Bigamy is a *prima facie* evidence of adultery.

3.2.6 Intolerability

Adultery alone does not establish irretrievable breakdown of a marriage. Under the act intolerability of the alleged adultery must be proved--
Section 15(2)

3.2.7 Confessions and Admissions

Confessions and admissions may prove evidence of adultery. Confessions are however, regarded with suspicion and caution by the courts particularly if the confessing party desires to obtain a divorce. The courts require that confession be corroborated. This may be deduced for example from a letter.

3.3 Respondent's Grave and Unbearable Conduct

A court may find that a marriage has broken down irrevocably if since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The conduct of the respondent in question must have occurred since the celebration of the marriage. The conduct must also have some reference to the marriage. The behaviour in question must be sufficiently framed such as in the following situations.

(a) Rape, Sodomy or Bestiality

If since the celebration of the marriage the respondent has committed rape, sodomy or bestiality, conduct of this nature is grave and would enable the unit to conclude that the petitioner cannot reasonably be expected to live with the respondent. See Sections 16(1)(a), 7(1)(a), 87(2), 32(2), 32(3) Matrimonial Causes Act of 1970.

(b) Habitual Drunkenness or Intoxication

The petitioner cannot be expected to live with the respondent where since the marriage the respondent has for a period of at least two years been a habitual drunkard or habitually been intoxicated by reason of taking or using, to excess, any sedative, narcotic or stimulating drug or preparation. It is irrelevant that for a part or parts of the prescribed period he was a habitual drunkard and for the other part, he has been

habitually intoxicated by drugs. See Section 16(1)(b) of the Matrimonial Causes Act 1970

SELF ASSESSMENT EXERCISE 2

What is the implication of Section 16(1)(b) of the Matrimonial Causes Act on a statutory marriage?

4.0 CONCLUSION

This study has shown how to determine when a marital relationship is no longer normal. Note that the legal definition of a normal marital relationship is sought in the concept of a consortium. The test or method used by the courts to determine whether the consortium has been terminated or seriously violated involves subjective as well as objective elements.

5.0 SUMMARY

This unit deals with the grounds for divorce created under the Matrimonial Causes Act of 1970.

6.0 TUTOR-MARKED ASSIGNMENT

What are the implications of Section 16(1) of the Matrimonial Causes Act of 1970 on a statutory marriage?

7.0 REFERENCES/FURTHER READING

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Matrimonial Causes Acts and Rules.

UNIT 3 GROUNDS FOR DIVORCE II CONTENTS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Frequent Conviction and Leaving the Spouse without Support
 - 3.2 Imprisonment
 - 3.3 Attempted Murder and Assault
 - 3.4 Habitual and Woeful Failure to Support
 - 3.5 Insanity
 - 3.6 Desertion
 - 3.7 Defacto Separation
 - 3.8 Animus Deserendi
 - 3.9 Lack of Just Cause
 - 3.10 Separation and Respondents' Consent to Dissolution
 - 3.11 Living Apart For Two Years
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

We shall examine the grounds for divorce further in this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the divorce law
- list the grounds for divorce which currently exist in our law
- explain in detail when a marriage can be considered as having broken down irrevocably
- explain whether the court has the discretion to refuse a divorce if one of the grounds for divorce is proved.

3.0 MAIN CONTENT

3.1 Frequent Conviction and Leaving the Spouse without Support

Section 15(2) (c) of the Matrimonial Causes Act 1970 comes into play where since the marriage, the respondent has within a period not exceeding 5 years suffered frequent convictions for crime and has been sentenced on the aggregate to not less than three years imprisonment. Besides, he must have habitually left the partner without a reasonable means of support.

The convictions and sentences must have occurred after the marriage. In *W v Short* (1962) 4FLR 115, the husband from October 1959 to June 1960 was engaged in criminal activities which involved defrauding his employer. He was brought to trial and pleaded guilty in July 1960. The indictment contained many counts. There were twenty five charges of forgery, twenty five charges of altering and three charges of obtaining property by false pretences on the charges of forgery and altering. He was sentenced on each count to imprisonment for seven years. The sentences were to be served concurrently. On the remaining charges, he was sentenced to imprisonment for three years concurrently. It was known that the respondent had undergone frequent conviction. The emphasis in Section 16(1)(c) is on the frequency of conviction and aggregation of sentences rather than on the actual period of imprisonment.

3.2 Imprisonment

Where in the marriage, the respondent, has been in prison for a period of not less than three years after conviction, Section 16 will operate. For an offence punishable by death or imprisonment for life or for a period of five years or more, and he/she is still in prison at the date of the petition, Section 16 will be used.

SELF ASSESSMENT EXERCISE 1

What are the requirements for the granting of a divorce on the grounds of conviction, and habitual drunkenness?

3.3 Attempt to Murder and Assault

Where since the marriage and within one year immediately preceding the date of petition, the respondent has been convicted of an attempt to murder or unlawfully kill the petitioner, Section 16 will be used. Where also he has committed the offence concerned with the intentional infliction of grievous bodily harm on the petitioner involving maiming, disfigurement, which seriously interfered with health or comfort of the petitioner, Section 6 would be put into effect.

3.4 Habitual and Woeful Failure to Support

Where the respondent has habitually and woefully failed during the period of two years immediately preceding the date of petition, to pay maintenance to the petitioner under a court order under a separation agreement, Section 16 would be useful. The order must be one made by a court in Nigeria.

The failure of the respondent to pay maintenance for the petitioner must also be wilful which connotes a deliberate act or decision on the part of the respondent. This provision is well stated in Section 16(1)(f) of the Matrimonial Causes Act of 1970. A court will only grant a decree of divorce under Section 16(1)(f) unless effort to enforce the maintenance order or agreement has failed.

3.5 Insanity

Insanity in one of the situations envisaged under Section 15(2)(c) of the Matrimonial Causes Act, 1970. This happens if the respondent at the time of the petition is of unsound mind and unlikely recover. In addition it must be proved that since years immediately preceding the date of the petition, he has been confined for a period or periods of not less than

five years in one or more institutions in or outside Nigeria where persons of unsound minds are confined.

Section 16(1) (g) of the Matrimonial Causes Act of 1970 is on this issue. A marriage will not be dissolved under this provision unless the court is satisfied that at the commencement of the hearing of the petition, the respondent was still confined in such an institution and cannot reasonably be expected to live with such conduct of the respondent that causes danger to life, limb or health of the petitioner or reasonable apprehension or such danger. Such conduct may include physical assaults, humiliating treatment, nagging, the use of juju or charms, ungovernable temper, intemperate drinking and gambling.

SELF ASSESSMENT EXERCISE 2

Distinguish between insanity and unsoundness of mind as grounds for divorce.

3.6 Desertion

A marriage will be regarded as having broken down irretrievably where the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.

Desertion means the separation from the other which brings co-habitation permanently to an end without the consent of the other spouse. To constitute desertion four elements must be present at the same time.

1. De facto separation of the parties
2. *Animus deserendi*
3. Lack of just cause for the withdrawal from co-habitation.
4. The absence of the consent of the deserted spouse.

3.7 Defacto Separation

This implies bringing co-habitation to an end by severing immaterial obligations. The most obvious case occurs when one's spouse physically departs from the home. In another instance, a spouse who does not have an alternative place to go may continue to live there but repudiates all marital obligations. The desertion is just live physical departure. There may be desertion where the parties continue to live under the same roof.

3.8 Animus Deserendi

There must be an intention to withdraw from co-habitation permanently. When a spouse voluntarily abandons the home, there is a presumption that he intended to desert *animus deserendi*. There is no such intention where a spouse is temporarily absent from the other on business or on holidays or when there is mutual consent.

3.9 Lack of Just Cause

There will be no desertion if the spouse who has withdrawn from co-habitation has a good reason for doing so. Where one spouse is guilty of adultery or other matrimonial misconduct, the other spouse will have reasonable cause for living apart. In fact, if the innocent party fails to withdraw, he may forfeit his right to matrimonial relief on the ground that he has condoned or connived at the misconduct.

Often the deserter is not necessarily the spouse who lives apart from the matrimonial home. Such spouse may have been compelled by the conduct of the other spouse which constitutes just cause for living apart. Conduct which will be regarded as just cause or excuse must be of grave nature although it needs not constitute a matrimonial offence. To constitute a ground for divorce, desertion must have lasted for a continuous period of one year immediately preceding the presentation of petition.

Anyone or more periods not exceeding six months during which the parties resumed living with each other in the same household are not regarded as a break in the continuity of the period.

3.10 Separation and Respondents' Consent to Dissolution

A marriage will be regarded as having broken down irretrievably where the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted. See Section 15(2) [(e) of the Matrimonial Causes Act, of 1970.

3.11 Living Apart For Two Years

Under the Act, mere physical separation does not constitute living apart. There must also be termination of consortium. There must be a clear intention on the part of one or both of the spouses not to return to the other and the treatment of the marriage having come to an end.

The parties to a marriage will be treated as living apart unless they are living with each other.

4.0 CONCLUSION

In this unit we should have learnt that a court does not have the discretion to refuse a divorce if it is proved that a marriage has broken down irretrievably or that the requirements of Section 15(1) of the Matrimonial Causes Act has been complied with.

5.0 SUMMARY

This unit examines the various grounds that can bring a marriage to an end. It has dealt with:

Imprisonment Habitual
drunkenness Attempt to
murder or assault Insanity
Desertion etc.
Defacto separation
Lack of just cause
Separation and respondents' consent to dissolution
Living apart for two years

6.0 TUTOR-MARKED ASSIGNMENT

1. List the grounds for divorce created by Section 15(1) of the Matrimonial Causes Act of 1970.
2. When is a marital relationship no longer normal? Discuss with reference to relevant case law.
3. List the guideline laid down in Section 15(1) of the Matrimonial Causes Act of 1970 which may indicate that a marriage has broken down irretrievably.

7.0 REFERENCES/FURTHER READING

- Sagay I. (1999). *Nigeria Family Law, Cases Principles and Statute*. Lagos: Mathouse Publishers.
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Matrimonial Causes Acts and Rules.

UNIT 4 DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Non – Judicial Mode of Dissolution
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

This study unit deals with the rules which respectively apply to customary marriages, entered into by a party and the rules which apply in the case where a statutory marriage is concluded by a spouse who is also a party to a customary marriage

2.0 OBJECTIVES

At the end of this unit you should be able to:

- give a synopsis of the legal requirements which respectively apply to the conclusion of customary marriage and its dissolution
- explain what status the wife in a customary marriage occupies in terms of the regulation of customary marriage

briefly discuss the dissolution of a customary marriage.

3.0 MAIN CONTENT

Although family law concentrates mainly on statutory marriages, substantial proportions of the population enter into a different type of marriage namely the customary marriage.

The customary rules on the dissolution of customary marriage are not as developed and as strong as in the case of statutory marriages. In contrast to a statutory marriage, which can only be dissolved by a court of competent jurisdiction, a customary marriage can be dissolved in the traditional way without any formalities.

The family plays a role in the formation and dissolution of a customary marriage.

A traditional marriage may be dissolved non-judicially or judicially by the order of an appropriate Customary Court.

The relationship of a spouse with the family of the other spouse is very vital to the survival of a marriage as it may sometimes provide a ground for divorce.

3.1 Non – Judicial Mode of Dissolution

Non – judicial divorce may be effected without recourse to the law courts but mutual agreement of the spouses. When the union goes awry the families first attempt intervention. Where the marriage has broken down irretrievably and reconciliation fails, the couple may agree before members of the families to bring the marriage to an end. The families may then agree on the repayment of the bride-price paid in respect of the marriage.

4.0 CONCLUSION

We have examined customary law of marriage and divorce as currently accepted and judicially recognised as usage of the people modified by statutes or rules made in pursuance of statutory injunction.

5.0 SUMMARY

In this unit we have considered the grounds for divorce under customary law. Although it might not have been well developed like the statutory marriage, it is still developing.

6.0 TUTOR-MARKED ASSIGNMENT

State the grounds for divorce under customary law marriage.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute*. Lagos: Mathouse Publishers.

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Matrimonial Causes Acts and Rules.

MODULE 5

Unit 1	The Court Process I
Unit 2	The Court Process II
Unit 3	The Court Process III

UNIT 1 The Court Process I

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

1.0 INTRODUCTION

Matrimonial proceedings generally, whether it be for dissolution of marriage, nullity of marriage, jactation of marriage, judicial separation of conjugal rights, like every other form of litigation involves the use or of unusual quantities of energy and resources. The coming chapters of this work, beginning with the present one will illustrate this great exertion of energy. There is no short cut about the entire process. The correct things must be done at the right time. And getting the correct things done only comes by hard work and experience and determination to succeed.

Though the actual work load starts with the taking of instructions, but the test or indicator of success depends very much on the processes filed by the parties in court. Copying of forms or precedents may assist the legal practitioner in laying a good background to his case but the fact that no two cases are completely the same would further underline the need for particular attention in individual cases. Hence the counsel must fashion out a brief that represents his own client's instructions.

Not even the use of modern office equipment such as computers' could solve this problem. It only reduces the task, but the resourcefulness of the solicitor counts a great deal.

The test of that resourcefulness comes with the quality of pleadings filed by the solicitor. First is that the correct processes must be filed. Secondly they must contain the requisite properties or ingredients that would enable petitioner or respondent prove his case or defend an allegation. For example, a petition for dissolution must necessarily contain at least one ground upon which the petition is based and upon which the court would find that the marriage has broken down irretrievably. Such ground must be stated aptly or couched in the proper way as to give the legal effect. For instance, a petition with an only ground which alleges that the respondent is a flirt is grossly incompetent and is bound to fail.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain the court processes in respect of a divorce petition
- state the court of competent jurisdiction
- follow the practical approach to filling court processes in respect of matrimonial causes matters
- outline the various motions to be filed in the process of filing and serving matrimonial proceedings.

3.0 MAIN CONTENT

In this unit, we shall consider four major heads of petition together with their basic requirements as illustrated with examples. As practical work, the examples to be seen in this chapter are some out of the large number of examples that would be illustrated in the work in due course.

There are five major heads of petition that may be pending in respect of a matrimonial cause:

1. Petition for dissolution of marriage
2. Petition for judicial separation
3. Nullity of marriage
4. Restitution of conjugal rights
5. Petition for jactitation of marriage

Before embarking on certain fundamental aspects of each petition it is important to recall the nature and the frequency with which the various types of petitions pour into the courts.

It has been stated in the earlier part of this work that more than 90% of the matrimonial causes processes that are filed in the registry at the High Court in Lagos concentrate more or less on petitions for a decree of dissolution of marriage and ancillary applications.

This underlines the importance and the nature of that type of proceedings and the need to accord it ample space and in-depth work in the proceedings. For this reason therefore, a great length of detail would be devoted to petition for decree of dissolution of marriage and all the ancillary applications and processes required to be filed at various stages of the proceedings by parties in the matter, together with the various responses that may be elicited from the court from time to time by way of court orders or rulings until the final determination of the matter, not just at the High Court but at the Highest Court i.e. the Supreme Court.

3.1 Petition for a Decree of Dissolution of Marriage

A petitioner may proceed to court to file his or her petition once *the matter is one in which there is no going back. Only the order or judgments of the court would settle the issues involved. Rarely do petitioners themselves* come to court to file their papers by themselves except where those petitioners are themselves legal practitioners.

The legal practitioner for the petitioner would have by now resolved certain vital preliminary issues affecting the petition. Some of these preliminary points are (i) whether the matter is mature enough to be brought to court without the leave of the court or it is a matter for which leave of the honourable court must be first had and obtained (ii) what are the grounds on the basis of which the petition is brought? (iii) what offences has the respondent committed? Do they by any stroke of chance or measurement amount to any of the grounds for dissolution of marriage as set out in Section 15 of the Act or obtained in Order V Rule 12(2) of the Rules?

Immediately these questions are resolved, then the legal practitioner could very well be said to be ready to prepare the legal documents.

In answering the first question above, two things may happen. One may be “that the matter is not one for which leave of the honourable court is not required”. In that case no effort would be wasted in making any such application for such leave. The petition would first be filed straight away. The other may be that the matter is one in which the leave of the court must be obtained, then the first thing to do is to file the appropriate application for leave, argue the said application, obtain the order and then attach same to the petition before filing.

3.2 Where Leave of the Court is Required

From the Act, i.e. the MCA Cap M7, there are two situations in which the leave of the honourable court must be obtained before the major petition is presented in the court. That is, out of the five petitions that could possibly be presented in court, only in two out of the five do the requirements ~~of obtaining~~ of obtaining leave apply. The two are simply (i) petition for a decree of dissolution of marriage and (ii) petition for a decree of judicial separation. The requirements for leave for both petitions are exactly the same. These applications are provided for under Sections 30 and 40 of the Act and since the law has provided for the same requirements then the issue of leave would be treated here as it applies to both petitions.

Under Order IV of the Matrimonial Causes Rules 1983, Rule 1 thereof provides that application under Section 30 or 40 of the Act for leave to institute proceedings may be made ex-parte. It is clear by this provision that the application for leave may be made ex -parte pursuant for Section 30 or 40 of the Act and Order IV Rule 1 of the Matrimonial Cause Rule 1983.

As clearly stated, no proceedings would lie for dissolution of marriage within two years of the marriage unless leave of the court is obtained. The rationale for the rule is to deter people from rushing into ill- advised marriages and to prevent them from rushing out of marriage once they discover that the marriage has turned against their expectation. As to what amounts to "exceptional hardship or depravity", it must be shown that the hardship suffered by the applicant and the respondent's depravity must be shown to be something out of the ordinary. An allegation that the husband has started committing adultery with another

woman was held not to amount to exceptional depravity but merely an "extremely adulterous conduct".

In *Akere v. Akere*, the allegations were that the husband committed adultery with three women; inordinate sexual demands when the respondent was sick after returning from hospital; physical violence, constant neglect and quarreling and transferring venereal disease to the applicant. These were all held to be grounds for exceptional hardship and exceptional depravity. It has also been held that the burning of the certificate of the applicant, his engineering books, clothes, failure to perform the duties of a wife and refusing him sex amounted to exceptional hardship. See also the case *Hillier v. Hilier*.

Consider this example

Motion Ex-parte for leave to institute proceedings

IN THE HIGH COURT OF LAGOS STATE IN THE IKEJA JUDICIAL DIVISION HOLDEN AT IKEJA		SUIT NO:
BETWEEN		
MR. IRO Abdulahi	Petitioner/Applicant
AND		
MRS. IRO Abdulahi	Respondent
<p>MOTION EX-PARTE PURSUANT TO SECTION 30 (OR 40) OF THE MATRIMONIAL CAUSES ACT CAP M.7 2004, ORDER IV RULE .1 MATRIMONIAL CAUSES RULE 1983 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT</p> TAKE NOTICE that this Honourable Court may be moved ontheday of..... 2006 at the hour of 9 o'clock in the afternoon or so soon thereafter as counsel on behalf of the petitioner/applicant may be heard praying the Honourable Court for the following:		
<ol style="list-style-type: none"> 1. AN ORDER granting leave to the Petitioner/Applicant to commence or institute proceedings for dissolution of marriage with the Respondent herein. 2. AND for such further or other Orders as the Honourable Court may deem fit to make in the circumstances. 		
Dated this ,....., day of..... 2006. Mr. A. O. Agbejoro		
Legal Practitioner to the		

Applicant No. 10 Adugbo Road, Lagos.

The motion ex -parte must be accompanied by a supporting affidavit. The nature and contents of the affidavit in support of the said application for leave is amply provided for in Order IV Rule 2(a)- (f). In view of the importance of these provisions, they are set out below as follows:

2. *The affidavit in support of an application under Section 30 .or 40 of the Act for leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, as the case may be, shall:*
 - (a) *include particulars of the exceptional hardship that would .be imposed on the applicant by the refusal to grant the leave or particulars of the exceptional depravity on the part of the other party to the marriage that is alleged; as the case may be;*
 - (b) *state the ground upon which, if leave is granted, the applicant intends to petition for the decree; ,*
 - (c) *state whether or not the applicant has made a previous application for leave, under Section 30 or 40 of the Act, to institute proceedings for such a decree, and has made a previous application, also state the date and grounds on which and the court to which, the previous application was made and whether that application was granted;*
 - (d) *state whether or not a child of the marriage is living, and; if a child of the marriage is living, also state:*
 - (i) *the name of the child; (ii) the date of birth of the child; and (iii) the place at which, and persons with whom, the child is residing;*
 - (e) *state whether an attempt has been made to effect a reconciliation between the parties to the marriage and, if such an attempt had been made, state particulars of the attempt; and*
 - (f) *state particulars of any other circumstance that may assist the court in determining whether there is a reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.*

The applicant is also expected to attach the marriage certificate in respect of the marriage in question. Where the original is *not* available, he may attach a certified true copy and file same with the motion paper. Assuming the couple got married in another land and the marriage certificate is made out of French, German, Latin, Spanish or other language apart *from* English, that certificate shall be filed together with its translation into English. The translation shall be verified by the translator who shall depose *to* an affidavit stating his competence *to* make that translation.

However, where it is *not* possible for the applicant *to* file his marriage certificate at the time of filing the application for leave then such applicant must state in his affidavit in support of the application for leave the circumstances that prevented him from filing the said certificate of marriage.

Consider sample of Affidavit in support of Ex-parte motion

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA**

BETWEEN

MR IRO Abdulahi Petitioner/Applicant

AND

MRS. IRO Abdulahi Maryam Respondent

AFFIDAVIT IN SUPPORT OF MOTION EX-PARTE

I, Mr. Iro Abdulahi, male, Christian, adult, businessman of No. 50 Sukum Road, Lagos do hereby make oath and state as follows:

1. That I am the applicant in this matter by virtue of which I became conversant with the facts deposed hereunder.
2. That the Respondent herein is my wife having married her on the 10th day of June, 2004.
3. That immediately after the solemnisation of our marriage at Church of the Assumption, Falomo, a fight broke out between my family members and the members of the family of my wife.
4. That the applicant herein shall suffer exceptional hardship should the application be refused by this Honourable Court.
5. That the particulars of exceptional hardship which would be imposed on the applicant by the refusal of this Honourable Court to grant leave are as follows:
 - (a) That the Respondent suffered from cancer of the womb resulting in the complete removal of her womb in a surgical operation to save her life which fact she hid from that applicant.
 - (b) That the Respondent is presently suffering from alcoholism in such a way that no single day passes that she would not be found heavily drunk and often vomits or messes up the matrimonial home.
 - (c) The Respondent again is addicted to hard drugs namely cocaine and cigarettes -Benson & Hedges and always high on these substances and worst still always broke and demanding for cash always.
 - (d) The Respondent does not perform any of her matrimonial duties as it is the applicant that always cleans, sweeps, washes, cooks and does most household chores.
6. That the grounds upon which the applicant intends to petition this Honourable Court for a decree of dissolution of the marriage of the applicant with the respondent are as follows:
 - (i) Cruelty -
 - (ii) Desertion for at least one year

(iii) Adultery and intolerability.

7. That the applicant has never made any application for leave before now in respect of this marriage or any other marriage whatsoever.
8. That there is no child of the marriage.
9. That several attempts have been made to reconcile the parties without any success (Or that no attempt has been made to reconcile the parties).
10. That the particulars of attempt made for reconciliation of the petitioner and are as follows:
 - (i) Following complaints from me to her parents, we were asked to return home in Christmas 2005. I personally went home after several persuasions for her to come with me. When she promised to come during the New Year, she never turned up
 - (ii) In Easter 2006, when her parents took the pains of coming to Lagos to reconcile us, she promptly quarreled with them that same Easter Sunday and left our matrimonial home that day.
 - (iii) She turned down several invitations from our Pastor to call her to the church for counseling and eventual reconciliation. She quarreled with the pastor on two occasions in which he took time out of his busy schedule to visit us for same purpose.
11. That there is no reasonable probability of any form reconciliation between the Respondent and I.
12. That the Respondent would not be prejudiced if this application is granted by this Honourable Court.
13. That attached herewith and marked Exhibit' A' is a copy of the marriage certificate between the Respondent and I.
14. That I depose to this affidavit in good faith believing the same to be true and correct and in accordance with the Oaths Law.

.....
DEPONENT

Sworn to at the High Court Registry
Ikeja, this day of 2008.
BEFORE ME COMMISSIONER
FOR OATHS

It is important to note that the Matrimonial Causes Act itself and the Rules do not provide any sample of application ex- parte for leave to commence petition for decree of dissolution of marriage or for nullity of Marriage. The Act and the Rules do however provide basic information for the contents and the guide for the preparation of the necessary documents. Hence the final document i.e. the motion ex-parte together with its supporting affidavit is, basically a function of the legal

practitioner understanding of the Act and the rules and his previous experience. Therefore, no two applications of this nature would have exactly the same or similar particulars.

The sample shown above is the author's own application. It shows his humble knowledge of the provisions of the Matrimonial Causes Act and the Matrimonial Causes Rules given a set of peculiar facts.

Now consider another sample of this type of application. This sample is actually a sample filed by a legal practitioner in a case at the High Court Registry. The supporting affidavit deposes to certain peculiar set of facts. Compare the set of facts or the contents of the affidavit in the two examples. They are both aimed at one thing i.e. to convince the court that an order granting leave is necessary in each case.

Consider the sample

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDENATIKEJA**

SU
ITNO:

BETWEEN

MR. Pade Agbateru Petitioner/Applicant

AND

MRS. Wuni Agbateru
Respondent

**EX PARTE APPLICATION BROUGHT PURSUANT SECTION
30(3) OF MATRIMONIAL CAUSES ACT 1970 ORDER IV
RULES 1 AND 2 OF THE MATRIMONIAL CAUSES RULES 1983
AND UNDER THE INHERENT JURISDICTION OF THE
COURT**

TAKE NOTICE that the Honourable Court will be moved on theday of 2006 in the hour of 9 o'clock in the afternoon or so soon thereafter as the Petitioner/Applicant or his counsel n heard for:

1. An order of leave of this Honourable Court to institute proceedings for the dissolution of the marriage between Petitioner/Applicant and the Respondent within two years (marriage.

GROUND FOR THE APPLICATION

- (a) Exceptional hardship being fostered on the Petitioner/Applicant by the Respondent.
 - (b) Exceptional depravity being equally fostered on the Petitioner/Applicant by the Respondent.
2. And for such further order or other orders as this Honourable

Court may deem it fit to make in the circumstances.

Dated this Day of..... 2009.

...

.....
A. B. Mallamr Esq.
Dammd Chambers

**IN THE HIGH COURT OF LAGOS STATE
 IN THE IKEJA JUDICIAL DIVISION
 HOLDEN AT IKEJA -**

BETWEEN

MR Pade Agbateru Petitioner/Applicant

AND.

MRS Wuni Agbateru Respondent

AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR LEAVE

I, Mr. Pade Agbateru, Male, Christian, Nigerian Citizen residing at 50 Sodom Road, Lagos State Nigeria do hereby depose to the following facts thus:

1. That I am the above named person and a businessman by profession.
2. That I am forty-one yeas old having been born on the 16th day of December 1968 at Alagbado, Ifo Local Government Area of Lagos State.
3. That I got married to the Respondent Mrs. Wuni Agbateru on the 20th day of January 2006 at Ifo Marriage Registry, Lagos State.
4. That prior to the date of my marriage I have been residing and working in South Australia.
5. That I met the Respondent by chance at Sodom and Gomorrah Hotel, Lagos State early December 2005.
6. That I courted the Respondent for a very brief period before our wedding.

PARTICULARS OF EXCEPTIONAL HARDSHIP AND DEPRAVITY

7. That within these days of the Courtship, the said Respondent told me a lot about herself and her status namely:
 - (a) That she is a microbiologist by profession with her Bachelor of Science degree from the University of Kamal, Nigeria.
 - (b) That her name is Wuni Agbala and a daughter of Chief O. Agbala that owns ABC Airlines Limited Lagos-a popular airline and aviation company.
 - (c) That she was currently running a course with the medical

- institute in New York, USA that soon she would be licensed to practice medicine in USA.
- (d) That she hails from the Agbala family from Komu in Iseyin Local Government Area of Lagos State.
 - (e) That she is single and had no subsisting marriage at the time of our courtship.
 - (t) That I am the first man to fall in love with her and she would be happy if we tied the nuptial knot.
 - ???(g) That she had no child or children anywhere, having married before and that in fact that she was still a virgin.
8. That following our wedding at the Marriage Registry, Ifo on the, 20th day of January 2006, I discovered the following facts about her on the 1st of February 2006 thus:
- (a) That she is not and had never been a microbiologist anywhere before and that her so called Bachelor of Science degree from University of Kamal was forged.
 - (b) That there is no record of her gaining admission into the University of Kamal talkless of studying microbiology.
 - (c) That her name is not Wuni.
 - (d) That as I make these depositions her true identity is not known, as I have not met any of her parents.
 - (e) That I have heard her answer Julie Cole.
 - (t) That I visited the Agbala family at Komu in Iseyin Local Government Area of Lagos State. I was told by the family head that she is not a daughter of the revered Chief Agbala of ABC Airlines Limited fame and in fact not a member of the family.
 - (g) That the Respondent is not running any medical course with the medical institute in New York and will not qualify to be a doctor.
 - (h) That the Respondent has a subsisting marriage under the customary law and had two children from that marriage which she never disclosed to me.
 - (i) That the Respondent was far from being a virgin at the time of our courtship and subsequent marriage.
 - j) That I cannot be the first man to fall in love with her since she had a previous marriage.
9. That I discovered further that the Respondent is into drugs more especially hashish (Indian hemp) which she had vowed not to quit.
10. That on the 24th day of January 2006 the said Respondent introduced me to a business with her so called business partners, in which I invested the sum N8.4 million and it turned out to be a fraud on me. I lost every kobo I invested till date.
11. That on the 3rd of February 2006 the Respondent brought into my house her two children of the previous marriage to our

matrimonial home without clarification from me.

- 12. On the discovery of this fact I decided to abandon the home for her. I have found these conducts intolerable and cannot condone them.

GROUND FOR SEEKING LEAVE FOR THE DISSOLUTION OF THE MARRIAGE

- 13. That the conduct of the Respondent since the marriage is not what the Petitioner/Applicant is reasonably expected to live with under Section 15 (2c) of the Matrimonial Causes Act 1970.
- 14. That I have never made this type of application in my life and this is my first application of this nature.
- 15. That the names of the two children in question are John Cole and Mary Cole.
- 16. That according to the Respondent Mary Cole was born on the 10th day of January 2005.
- 17. That I have no doubt in my mind that my marriage with the Respondent is over as I cannot reasonably live with a pathological liar whose roots and identity are not known to me.
- 18. That I herein attach the photocopy of the marriage certificate issued to me on the 20th January 2006 at Ifo Marriage Registry Lagos.
- 19. That I authorise my solicitors Assunder & Associates No. 50 Sodom Road, Lagos to make this application on my behalf.
- 20. That I depose to this Affidavit in good faith believing the contents to be true and correct and in accordance with the Oaths Act.

.....
DEPONENT

Sworn to at the High Court Registry Sodom this day of 2009

BEFORE ME COMMISSIONER FOR OATHS

Having prepared the requisite documents, they must be taken to the Registry of the court for filing of the original. Not much would be said now about documentation here since a good segment has been mapped out for it in this work.

Again, since the application is ex -parte, there would be no need to serve the respondent with the motion paper. His/her appearance is not even needed in court during the hearing of the application.

The ultimate aim and expectancy of application ex-parte is the granting of the orders prayed for, following argument and persuasion by the legal

practitioner that the particular case is one that deserves the granting of the order, applying or employing available statutory and decided authority in the process.

Once the court is convinced, the order would be made. A copy of such order is exhibited below.

The application for leave is a preliminary and different proceeding. The proceedings start with the filing of the two documents: ex-parte motion and the supporting affidavit and ends with the obtaining of the relevant court order. It is clearly different from the main petition sought to be presented to the court for the Decree of dissolution or nullity. For this reason, the petition itself is not filed with the motion. It is after the issue of leave vide motion ex- parte is dealt with and concluded that the petitioner would commence with the petition assuming the court grants him leave to proceed with the petition.

The fact that the application ex -parte and its supporting affidavits constitute a different process is shown by the fact that the application is given a suit number after which the word 'M' is added after the number but before the year. That word 'M' there simply represents "Miscellaneous Application". Every miscellaneous application is set out to achieve something as in this case to get the permission of the court to enable the petitioner bring his petition for dissolution or nullity within two years of the marriage.

It is not in every case that an application is brought for leave that the leave must be granted. The court may refuse the order for leave. That is why it is extremely important to comply with the Rules and the provisions of the MCA regarding the contents of the affidavit in support of the motion ex-parte. It is very clear that where an affidavit in support of this type of application has failed or neglected to contain the vital informed provided by law, for example, the extraordinary or exceptional hardship or depravity, then the court would simply deny the applicant the order sought for. In short, failure to satisfy the court as to the requirements of the Act and the Rules would clearly spell doom for the application. This application will be refused, then he would not be permitted to file the petition for dissolution or nullity, though he may be so qualified at a future date to re-apply for the order granting leave depending on how far events have so far unfolded with regard to his/her married life.

The granting of the order is permission to proceed to file the petition. All the petitioner does is to get his papers ready and present them at the Registry for approval, assessment and filing of same. The petitioner presenting petition by leave of court must attach a copy of the said order

granting leave and serve same on the respondent at the time of serving the petition. "A petitioner who institutes for dissolution of marriage by leave of court under Section 300r Section 40 of the Act shall cause service of a copy of the order of the court granting the leave to be effected on his spouse at the same time as service of the petition is effected on his spouse".

Consider a sample of the order.

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 11, FAMILY & PROBATE
BEFORE THE HON. JUSTICE O.O MAYERO
TODAY MONDAY 30TH OF MARCH 2006.**

SUIT NO:
ID/001M/2006

BETWEEN

MR Rasheed Kalala Petitioner/Applicant

AND

MRS. Jumoke Kalala Respondent

ENROLMENT OF ORDER

HON. JUSTICE JUDGE

UPON THIS MOTION EX-PARTE dated 3rd day of March 2006 filed in the court Registry the same date brought pursuant to Section 30 (3) of Matrimonial Causes Act, 1970 and order IV Rules 1 and 2 of the Matrimonial Causes Rules 1983 and under the inherit jurisdiction of the court praying for the following orders:

1. An order of leave of this Honourable Court to institute proceedings for the dissolution of the marriage between the Petitioner/Applicant and the Respondent within two years of the marriage.
 - (a) Exceptional hardship being fostered on the Petitioner/ Applicant by the Respondent.
 - (b) Exceptional depravity being equally fostered on the Petitioner/ Applicant by the Respondent.

UPON READING the affidavit of Mr. Raheed Kalala residing at A Drive, Okoli Garden, Alausa, Ikeja sworn to and filed on the 3rd day of March, 2006.

AND AFTER Arstoff Esq. of counsel to the Applicant move in support the application

IT IS HEREBY ORDERED AS PRAYED.

Dated at Ikeja this 20th day of March, 2006.

Alao Obi
Registrar

4.0 CONCLUSION

This unit focuses on the hierarchies of courts in Nigeria and the jurisdiction of courts in Customary Courts matters. It is important we know the powers of each court with respect to Matrimonia Causes matters in Nigeria.

5.0 SUMMARY

This unit has examined:

- The Court of competent jurisdiction in divorce matters
- The procedural approach in filing Matrimonia Causes matters
- Ex-parte application
- Motion on notice.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the effect of domicile of the husband on the wife of the marriage.
2. What are the implications of connivance and condonation of parties to a marriage on a divorce petition?

7.0 REFERENCES/FURTHER READING

Uzo, I.K. (2006). *Matrimonial Proceeding Law Digest*.

Sagay, Itse (1999). *Nigeria Family Law, Principles, Cases and Statute*. Lagos: Mathouse Publishers Ltd.

Onokah, Margret C. (2003). *Family Law in Nigeria*. Enugu: Spectrum Publishers.

UNIT 2 THE COURT PROCESS II CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Petition
 - 3.2 Order V – Petition

- 3.3 Petition for Decree of Dissolution of Marriage Nulity of Marriage or Judicial Separation
- 3.4 Petition for the Decree of Dissolution of Marriage
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

This study unit is closely connected with the previous two study units in which grounds for dissolution of marriage was discussed.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- identify the practical steps to be followed in filing a divorce petition
- give the information to be disclosed in filling divorce petition
- discuss the precedent to be followed in filing a divorce petition.

3.0 MAIN CONTENT

3.1 Petition for Decree of Dissolution of Marriage

The position has since been made clear. It is that where the petition is sought to be presented to the court within a period of two years of the marriage, the petitioner must first obtain the leave of the court before presenting the said petition. However, it is not in every case that the petitioner must first obtain leave of the court. For example, if the petitioner seeks to present his petition after a period of more than two years after the marriage then there would be no need for leave of the honourable court. In fact the issue of leave of the court rests mainly on the period of time after the marriage when the petitioner intends to approach the court. If the petitioner for any reason intends to apply to the court vide a petition for dissolution of marriage within two years of his marriage, then leave of the court becomes necessary.

However, once the two year mark has been exceeded then the petitioner may dispense with the leave of the court. He could go to court straight away without any need to first obtain any form of leave to institute proceedings.

(i) The Petition

This is a very complex and technical document that must be prepared in accordance with statutory and procedural requirements. The content of every form of petition is determined by the Rules and the particular fact that gives rise to the petition itself.

Order V Part I of the Matrimonial Cause Rules makes a general provision for petitions. Order V Rule I provides for particulars of parties I' to be included in a petition. Due to its importance Rules (1) (a)-(d), (2), (3)(a) -(j) are reproduced:

ORDER V -PETITIONS

- (1) *A petition shall state the full name of each party to the proceedings and; in addition:*
 - (a) *the address and occupation of the petitioner;*
 - (b) *the address and occupation, so far as known to the. petitioner; of each other party to the proceedings,.*
 - (c) *the name of the wife immediately before the marriage, or alleged marriage, as the case may be, and*
 - (d) *the address and occupation, so far as known to the petitioner; of any person, not being a party to the proceedings, specified in the petition as a person with whom or on whom the respondent is alleged to have committed adultery, rape or sodomy.*
- (2) *Where the address, at the date of the petition, of party or person referred to in sub-rule 1 of this rule is not known to the petitioner; the petition shall state that the address is not known to the petitioner and also state the last address (if any) of the party or person known to the petitioner.*
- (3) *A petition shall state:*
 - (a) *particulars of the marriage or purported marriage to which the petition relates,*
 - (b) *particulars relating to the birth of the parties to the marriage or purported marriage;*
 - (c) *particulars relating to the domicile or residence of the petitioner in Nigeria;*
 - (d) *particulars of the co-habitation of the parties to the marriage,*
 - (e) *the particulars relating to the children of the parties to the marriage and the children of either party to the marriage required by Rule 8 of this Order;*
 - (f) *particulars of previous proceedings between the parties to the marriage,*
 - (g) *the facts, but not the evidence by which the facts are to be proved, relied on as constituting the ground or each ground*

specified in the petition, stating, if more than one ground is so specified, the facts relating to each ground, as far as practicable, separately,.

- (h) *in the case of a petition for a decree of dissolution of marriage or judicial separation -the matters required by Rule 7 of this Order,*
- (i) *in the case of a petition for a decree of dissolution of marriage or of nullity of a voidable marriage -particulars concerning the arrangements referred to in Rule 14 or 15 of this Order, and*
- (j) *in the case of a petition instituting proceedings of a kind referred to in paragraph (c) of the definition of "matrimonial cause" -the matters required by Order XI, Rule 4 of these Rules.*

From the above stated provisions of the rules certain specified subheadings appear. And it is along these subheadings that the petition for dissolution of any marriage is concluded. These subheadings may be stated as follows:

1. Introduction
2. Marriage
3. Birth of petitioner and respondent
4. Domicile or residence
5. Co-habitation
6. Children
7. Previous proceedings
8. Facts
9. Condonation, connivance and collusion.
10. Proposed arrangement for children
11. Maintenance and settlement of property
12. Exercise of court's discretion
13. Other matters
14. Order sought
15. Conclusion

The provisions of Order V Rule (1) (a) -(d) and (2) make general provision with regard to the introduction of the parties. As seen above, it requires that every petition shall state the full name of each party to the proceedings and in particular the address and occupation of the petitioner etc. The contents of petitions are now outlined in sub Rule 3 of Rule 1 above. Each of the particulars that are required to be stated in every petition with regard to the above subheadings having been provided for starting from particulars relating to marriage, which are clearly provided for in sub Rule 4 of Rule 1. Our attention shall soon be directed to this sub Rule when dealing in particulars relating to marriage in a very short while.

In order to appreciate the various provisions regarding the contents of a petition, it is really important to first of all reproduce the format or praecipe in Form 6. The form is not just a praecipe for petition for Decree of Dissolution of marriage only. It also serves as a format for Petition for Decree of Nullity of marriage and for Petition for Decree of Judicial Separation. So the format is such an important format in itself in view of the role it is going to play shortly in this work.. This format is actually Form 6 in the first schedule to the rules.

**PETITION FOR DECREE OF DISSOLUTION OF MARRIAGE
NULLITY OF MARRIAGE OR JUDICIAL SEPARATION**

To the above named High Court.

The Petitioner, whose address is and whose occupation is, petitions the court for a decree of against the Respondent, whose address is, and whose occupation is, on the ground of

- a.
- b.
- c.

MARRIAGE

1. The Petitioner, then a (conjugal condition) was lawfully married to (or went through a ceremony of marriage with) the Respondent, then a (conjugal condition), at On the day of, 20, according to Christian rites.
2. The surname of the..... immediately before marriage (or purported marriage) was.....
3. (Here insert any particulars required by sub-rule (5) or (6) of Order V, Rule 1).

BIRTH OF PETITIONER AND RESPONDENT

4. The Petitioner was born at on the day..... of....., 19..... and the Respondent was born at, on the..... day of....., 19.....
5. (Here insert any particulars required by sub-rule (2) of Order V. Rule 2). V, rule 2).

DOMICILE OR RESIDENCE

6. The Petitioner is, within the meaning of the Act, domiciled in Nigeria.

The facts on which the court will be asked to find that the Petitioner is so domiciled are as follows:

- a.
- b.

c.

COHABITATION

7. Particulars of the places at which and periods during which the Petitioner and the Respondent have co-habited are as follows:
- 1.
 - 2.
 - 3.
- or**
7. The Petitioner and Respondent have never co-habited.
8. The date on which and circumstances in which co-habitation between the Petitioner and Respondent ceased (or last ceased) are as follows: (leave out if the Petitioner and Respondent have never co-habited).

CHILDREN

9. There are no children to whom Order V Rule 5 applies.
- or**
9. Particulars relating to the children to whom Order V rule 8 i., applies are as follows:

PREVIOUS PROCEEDINGS

10. Since the marriage (or ceremony of marriage) there have not been any previous proceedings in a court between the Petitioner and the Respondent.
- or**
10. The following are particulars of previous proceedings between the Petitioner and the Respondent since the marriage (or ceremony of marriage)
11. Since the marriage (or ceremony of marriage) there have not been any proceedings, instituted otherwise than between the parties to the marriage, concerning the maintenance, custody guardianship, welfare, advancement or education of a child of the marriage.
- or**
11. The following are particulars of proceedings that have been instituted since the marriage (or ceremony of marriage) otherwise than between the parties to the marriage concerning the maintenance, custody, guardianship, welfare advancement or education of a child of the marriage.

FACTS

12. The facts relied on by the Petitioner as constituting the grounds (or each ground) specified above are as follows:
- 1.
 - 2.
 - 3.

CONDONATION, CONNIVANCE AND COLLUSION**(Leave out in the case of a petition for nullity of marriage)**

13. The Petitioner has not condoned or connived with the ground (or any of the grounds) specified above, and is not guilty of collusion in presenting this petition.

13. The Petitioner has not connived with the ground (or any of the grounds) specified above, and is not guilty of collusion in presenting this petition; the following facts are furnished in relation to condonation:

PROPOSED ARRANGEMENT FOR CHILDREN**(Leave out if Order V, Rule 14 does not apply)**

14. (Here state the matters required by Order V, Rule 14).

MAINTENANCE AND SETTLEMENT OF PROPERTY**(Leave out if no order for maintenance or settlement of property is sought).**

15. (Here set out the particulars required by Order XIV, Rule 4).

EXERCISE OF COURTS DISCRETION**(Leave out if Order V, Rule 13A does not apply).**

16. The Court will be asked to make a decree notwithstanding the facts the circumstances set out in the discretion statement filed herewith:

OTHER MATTERS**(In succeeding paragraphs set out any additional matters, including any matters required or permitted to be stated by virtue of Order V, Rule 15 or 1 or Order XIV, Rule 4).****ORDERS SOUGHT**

The petitioner seeks the following orders:

- (a) A decree on the ground (in the following sub- paragraphs set out each other order sought).
- (b) The petition was settled by (name of counsel).

Legal Practitioner for the Petitioner.

Filed on the..... day of ...2009 on behalf of the Petitioner, whose address for service is

The format above is a general format or praecipi which an applicant or petitioner seeking three out of the five decrees under the Act must follow, that is, a petitioner seeking a decree for dissolution of marriage or a petitioner seeking a decree for nullity of marriage or a petitioner seeking a decree for judicial separation must prepare their petition in line with the above format. However, even though this particular format avails a petitioner in the above three circumstances, it does not follow that the contents of this format must be copied verbatim in each case. Every petitioner in the three instances cited above ought to apply that format giving the peculiar facts giving rise to the particular petition and meaningfully within the contents of that format. Even in one particular

petition for instance petition for decree of dissolution marriage, two different petitioners may not apply the same format to produce exactly the same result. For instance if petitioner A has three children with his spouse before filing his petition in court and petitioner B has no child from his marriage to his spouse, their reaction to the subheading on children the marriage or particulars of children will definitely be different.

Looking at the foregoing format, it is instructive to note that after the title, which is the name of the High Court and the parties, introduction follows. There should be no problem with the title at this stage which is merely the High Court and the division in which the petition is and the parties thereto together with the suit number as shown in the sample below.

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDENAT IKEJA**

SUIT NO.....
BETWEEN
MR. Joseph Asuguo Petitioner
AND
MRS. Edna Asuquo Respondent

Immediately following this sample is a short introduction of the petitioner and the respondent which is directed to the above named High Court. Singled (out from the format in Form six it appears thus:

To the above named High Court.

The Petitioner, whose address isand whose occupation is , petitions the court for a decree of against the Respondent, whose address isand whose occupation is ,on the grounds of

- 1.
- 2.
- 3.

From this particular format and the provisions of the rules especially Order V Rule 1 (1) the information to be contained in this introduction is made up of the particulars of the parties to be included in the petition. Hence referring to the said order reproduced above, the particulars include the full name of each party to the proceedings, the address and occupation of the petitioner and the address and occupation of each other party to the proceedings so far as known to the petitioner. The name of the wife immediately before the marriage, the address and occupation so far as known to the petitioner or person with whom,

though not being a party to the proceedings the respondent is alleged to have committed rape or adultery or sodomy.

In the event that the address of a party is unknown to the petitioner at the time of filing the petition, then the petitioner shall state that the address is unknown to him and he will be required to state the last known address if any.

PETITION FOR THE DECREE OF DISSOLUTION OF MARRIAGE

In real life therefore, an introduction will look thus:

PETITION FOR THE DECREE OF DISSOLUTION OF MARRIAGE

To the above named High Court.

The petitioner whose address is No. 123 Seduction Road Ijeshatedo Lagos and whose occupation is dancing, petitions this Honourable Court for a decree of dissolution of marriage against the Respondent whose address is 123 Seduction Road, Lagos and whose occupation is business on the grounds of:

a. Cruelty

Desertion for at least two years immediately preceding the presentation of this petition

Living apart for a continuous period of five years immediately preceding the presentation of this petition.

The next subheading following the format in Form six is marriage.

4.0 CONCLUSION

We have looked at the court process in respect of dissolution of marriage according to the Matrimonia Causes Act. It is possible for one of the parties to bring an action for the annulment of the marriage in the law court if all the conditions precedent is fulfilled.

5.0 SUMMARY

This unit has explained the following:

The grounds upon which a marriage can be dissolved

The filling process

The guiding rules

6.0 TUTOR-MARKED ASSIGNMENT

1. List the steps involved in presenting a divorce petition to the law court
2. Describe the essence of Order V of the Matrimonial Causes proceeding.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute*. Lagos: Mathouse Publishers.

Onokah, M. C. (2003). *Family Law in Nigeria*. Enugu: Spectrum Publishers.

Nwogugu: (2001). *Family Law in Nigeria*. Heinemann Ibadan: Educational Books.

Aderibigbe, Remi (2004). *Family Law in Nigeria*. Lagos: Codes Publishers.

Matrimonial Causes Acts and Rules.

UNIT 3 THE COURT PROCESS III

CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Marriage

3.2 Birth of Petitioner and Respondent

3.3 Domicile or Residence

3.4	Co-habitation
3.5	Children
3.6	Previous Proceedings
3.7	Condonation, Convivance and Collusion
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

1.0 INTRODUCTION

This study unit is closely connected with the previous two study units in which grounds for dissolution of marriage was discussed. Those units discussed the grounds for the dissolution of marriage and certain requirements to be met before a petition for dissolution of marriage is filed.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- identify the practical steps to be followed in filing a divorce petition
- state the information to be disclosed in filling a divorce petition
- discuss the precedents to be followed in filing a divorce petition.

3.0 MAIN CONTENT

1. The Petitioner, then a (conjugal condition) was lawfully married to (or went through a ceremony of marriage with) the Respondent then, a (conjugal condition), at on theday of, 19, according to Christian rites.
2. The surname of the Respondent immediately before the marriage (or purported marriage) was
3. (Here insert any particulars required by sub-rule (5) or (6) of Order V, Rule 1).

Order V rule 1 (4) makes provisions for particulars relating to marriage in the following terms; -

- (4) For the purpose of paragraph (a) of sub-rule 3 of this rule, the particulars of the marriage or purported marriage that required to be stated in a petition are: I (a) the place at which and date on which the marriage or purported marriage was solemnised.
- (b) the nature of the ceremony by virtue of which the marriage or purported marriage was solemnised; (c) if that ceremony was a religious ceremony -the religion denomination according to the rites of which the marriage or purported marriage was solemnised and

- (d) the original status of the Petitioner and Respondent respectively, immediately before the solemnisation of marriage or purported marriage.
- (5) Where a Petitioner has been previously married, his petition shall state:
- (a) the date of the previous marriage or of each previous marriage, as the case may be,
 - (b) the means by which the previous marriage or each previous marriage was dissolved; and
 - (c) if a previous marriage was dissolved by a court-the name of the court by which, and the date on which, the marriage was dissolved.
- (6) Where the respondent to a petition has been previously married, the petition shall, so far as those facts are known to the petitioner, state:
- (a) the date of the previous marriage or of each previous marriage, as the case may be;
 - (b) the means by which the previous marriage or each previous marriage was dissolved; and
 - (c) if a previous marriage was dissolved by a court- the name of the court by which, and the date on which, that marriage was dissolved.

Notwithstanding its elaborate provisions, a petitioner may only apply part of the provisions stated above that are relevant to the facts of his own case and in a typical petition may have only the following to state:

MARRIAGE

1. The petitioner, then a bachelor was lawfully married to the respondent, then a spinster at the marriage registry at Lagos on the 8th of June 2002 according to Christian marriage rites.
2. The surname of the Respondent immediately before the marriage was Eziefe. Next following marriage is the subheading:

Birth of Petitioner and Respondent: which appears thus in Form 6

BIRTH OF PETITONER AND RESPONDENT

4. The Petitioner was born aton theday of 19, and the Respondent was born aton theday of, 19
5. (Here insert any particulars required by sub-rule (2) of Order V, Rule 2).

The rules which make provisions for particulars of date and place of birth of the parties provide as follows:

3.(1) For the purpose of paragraph (b) of sub-rule (3) of Rule 1 of this Order, the particulars relating to the birth of the parties to the marriage that are required to be stated in a petition are the date and place of birth of each party to the marriage.

(2) Where a party to the marriage was not born in Nigeria, particulars of the date on which the party entered Nigeria or, if the party has re-entered Nigeria shall be stated in a petition in addition to the particulars referred to in the last preceding sub-rule.

In a typical petition, the specimen below satisfies the requirement for the subheading. The date and place of birth of the petitioner and respondent are exactly what is required as shown in the sample below:

BIRTH OF PETITIONER AND RESPONDENT

3. The Petitioner was born in Lagos on the 10th of July 1970 while the Respondent was born at Enugu Town in Enugu State of Nigeria on the 17th day of December 1973.

After the birth of the petitioner and respondent, comes domicile or residence. The petitioner must be domiciled in Nigeria before the court can validly exercise any form of jurisdiction in favour of a petitioner who has presented a petition for a decree of dissolution of marriage. This requirement must be satisfied. Under the rules which provide as follows:

4.(1) The rules relate to the particulars relating to the domicile or residence of a petitioner in Nigeria that are required to be stated in a petition for the purpose of paragraph (c) of sub-rule (3) of Rule 1 of this Order.

(2) The petition shall state that the petitioner is, within the meaning of the Act, domiciled or resident, as the case may be, in Nigeria

(3) the facts, but not the evidence by which the facts are to be proved, upon which the court will be asked to find that the petitioner is, within the meaning of the Act, domiciled or resident, as the case may be, in Nigeria shall be stated in the petition in as concise a form as the nature of the case allows.

In a real petition, the petitioner states in his petition with regard to domicile or residence as follows:

DOMICILE OR RESIDENCE

4. The petitioner is, within the meaning of the Act, domiciled in Nigeria. The facts on which the court will be asked to find that the petitioner is domiciled are as follows:

Previous to the marriage the petitioner was residing at and maintained homes at 123 Seduction Road, Ijeshatedo, Lagos State since 2002 at the said address within the jurisdiction of Lagos State since that date.

The next four subheadings following domicile or residence are as follows”

- a. Co-habitation
- b. Children
- c. Previous proceedings
- d. Facts

Under the Matrimonial Causes Act Rules, these subheadings and the particulars that are supposed to be furnished concerning these subheads are provided as follows:

4. (1) For the purpose of paragraph (d) of sub-rule 3 of the Rule 1 of this Order, the particulars of the co-habitation of the parties that are required to be included in a petition are, subject to sub-rules (2) and (3) of this rule, particulars, to the best of the recollection of the Petitioner:

(a) of the places of residence at which the parties to the marriage have co-habited for periods that; having regard to all the circumstances, were substantial, (b) of the periods during which the parties co-habited at those places, and

(c.) the date on which, and circumstances in which, co-habitation between the parties ceased or last ceased; as the case maybe.

(2) Where the parties to the marriage have never co-habited, the petition shall include a statement to that effect.

(3) Where the parties to the marriage have never co-habited at a place of residence, or have never co-habited at a place of residence for a period that, having regard to all the circumstances, was substantial, the petition shall include a statement to that effect and a statement of the circumstances in which they cohabited during the marriage.

5. (1) *This rule applies to: (a) any child of the marriage living at the date of the petition who has not attained the age of twenty-one years*
(b) any child of the marriage who has attained the age of twenty-one years and in respect of whom an order is sought under Sections 70, 71 or 72 of the Act,
(c) any child of the parties to the marriage who has been adopted by another person or other persons or has been placed by the parties in the care of a person or persons with a view to the adoption of the child by that person or those persons or by another person or other persons and
(d) any child of a party to the marriage who:
(i) has, at any time since the marriage, ordinarily been a member of the household of the husband and wife and
(ii) has been adopted by another person or other persons or has been placed by that party in the care of a person or persons with a view to the adoption of the child by that person or those persons or by another person or other persons. .
- (2) *The particulars relating to any child to whom this rule applies that are to be stated in a petition are:*
(a) in the case of a child referred to in paragraph (a) or (b) of sub-rule (1) of this rule -the full name and date of birth of the child and the name of the persons with whom the child is residing, or
(b) in the case of a child referred to in paragraph (c) or (d) of that sub-rule:
(i) the full name (if any) under which the parties, or either of them, registered the birth of the child,
(ii) the date of birth of the child and
(iii) the date on or about which consent to the adoption of the child was given or the child was placed in the care of another person or persons with a view to his adoption.
- (3) *If there are no children to whom this rule applies the petition shall include a statement to that effect.*
- (4) *Where the petitioner disputes the parentage of a child born, since the solemnisation of the marriage to which the petition relates, to the female party to the marriage, the petition shall also state that the parentage of the child is in dispute and the grounds on which the parentage of the child is disputed.*
- (5) *Where a person who is deemed; by virtue of section 69 of the Act, to be a child of the marriage to which the petition relates is living at the date of the petition, the petition shall also state the circumstances that result in the person being so deemed to be a child of the marriage.*
6. (1) *This rule relates to the particulars of previous proceedings that are required to be stated in a petition for the purpose of paragraph (f) of sub-rule (3) of rule 1 of this Order of these Rules.*

(2) *Subject to sub-rule (3) of this Rule, the petition shall state the particulars of.*

(a) *any proceedings that have, since the marriage to which the petition relates, been instituted, whether in Nigeria or elsewhere, in any court between the parties to the marriage;*

and

(b) *any proceedings concerning the maintenance, custody guardianship, welfare, advancement or education of a child of that marriage that have been instituted, whether in Nigeria or elsewhere, otherwise than between those parties.*

(3) *Where no proceedings referred to in sub-rule (2) of Rules have been instituted; the petition shall include a statement to that effect. .*

(4) *Where the petition includes particulars of a proceedings referred to in sub-rule (2) of this Rule, being proceedings that have been heard and determined by a court: (a) particulars of the Order made in the proceedings, and the date on which and court by which the order was made, shall stated in the petition,. and*

(b) the petition shall also state whether the parties to the marriage have co-habited since the making of that Order:

(5) *Where an order of a court, or an agreement, make provision for the payment of maintenance in respect of a party to marriage or a child of a marriage is in force, a petition relating to the marriage shall state the amount of maintenance payable under the order or agreement.*

In complying with the provisions of the law or the provisions, the petitioner may come up with the following responses with regard to four (4) subheads:

CO-HABITION

5. The Petitioner and the Respondent co-habited at said 123 Seduction Road, Lagos before the Respondent suddenly moved out of her matrimonial home two months after the marriage.

CHILDREN

6. There are no children to whom Order, V Rule (a) applies.

PREVIOUS PROCEEDINGS

7. Since the marriage there have not been any previous proceedings in a court between the Petitioner and the Respondent.

FACTS

8. The facts relied on by the Petitioner as constituting grounds specified

above are as follows:

- (a) Cruelty: The Respondent never paid any attention to the emotional needs of the Petitioner and instead was quarrelsome, insolent and persistently rude to the Petitioner. She refused to have sex with the Petitioner.
- (b) Desertion for at least one year: That the Respondent willfully deserted the Petitioner two months after the marriage, precisely on the 19th of August 2002 resulting in a situation of no co-habitation between the parties.
- (c) That the Respondent *by* reason of her desertion has therefore lived apart from the Petitioner from the 18th of August 2002 up till date.

Finally, with regard to:

- (i) Condonation, Connivance and Collusion
- (ii) Orders sought
- (iii) Conclusion;

The Matrimonial Causes Rules also provide as follows:

7. (1) *A petition instituting proceedings for a decree of dissolution of marriage or of judicial separation upon a ground specified in any of paragraphs (a) to (g), inclusive, of section 15(2) of the Act or Section 39 of the Act, as the case may be, shall contain: .*
 - (a) *a statement that the Petitioner has not connived at that ground; and*
 - (b) *a denial that he has condoned that ground; or a statement of all facts relevant to the question whether he has condoned that ground, including any facts relevant to the question whether that ground has been revived.*
- (2) *A petition instituting proceedings for a decree of dissolution of marriage or of judicial separation shall contain a statement that, in bringing the proceedings, the Petitioner has not been guilty of collusion with intent to cause a perversion of justice.*
8. (1) *Where a Petitioner institutes, by his petition, proceedings with respect to the maintenance of the petitioner, settlements, damages in respect of adultery, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, the petition shall contain particulars of the orders sought by him, and the facts relating to the proceedings as required by Order XIV rule 4 of these Rules.*

(2) *Where a Petitioner is seeking for an order as to the costs of any proceedings instituted by his petition, the petition shall set out particulars of the order sought as to costs.*

- 9. (1) *A petition shall bear the date of the day on which it is filed.*
- (2) *Where a petition is settled by a legal practitioner; the name of the legal practitioner shall be written on the petition.*
- (3) *A petition shall be signed:*
 - (a) *if the Petitioner is represented by a legal practitioner -by the legal practitioner personally; or*
 - (b) *if the Petitioner is not represented by a legal practitioner- by the Petitioner:*

And in applying these provisions of the Rules, the following may be represented as follows:

CONDONATION, CONNIVANCE AND COLLUSION

9. The Petitioner has not condoned or connived at any of the grounds specified above, and is not guilty of collusion in presenting this petition.

ORDER SOUGHT

10. The Petitioner seeks the following order:
 (A Decree of Dissolution of marriage between the Petitioner and Respondent on the grounds of cruelty and desertion.

This Petition was settled by Ike Ogbonnaya, Esq., legal practitioner to the Petitioner

Filed on the day of 2009

By Illasi Okon Esq. legal practitioner on behalf of the Petitioner whose address for service is No. 55 Western Avenue, Surulere, Lagos State.

.....
Illasi Okon. ESQ.
(Petitioner Counsel)

It has been sufficiently stated that a petitioner need not supply answers to all the questions and the subheadings. This is so especially where the particulars required under that subhead are not known to the petitioner at the time of presenting the petition. Further to the above, due to the peculiar circumstances of individual cases, certain conditions may be inapplicable. For instance where there is no child or children of the marriage, the petitioner need not state that the marriage was blessed with a child or children and *ipso facto* there would be no need to furnish any particulars relating to the upkeep and maintenance of the children of the marriage. Where also here has never been any previous proceeding in any court between the petitioner and the respondent prior to the presentation of the petition, the correct thing to state is that there was never any previous proceeding accordingly.

The applicant must state the reliefs he is seeking in his petition. This is a settled principle of pleading. Failure to state the reliefs sought may deprive the court the jurisdiction to hear and entertain the matter on behalf of the petitioner. The main relief usually sought is for a decree for dissolution of marriage between the parties. Apart from this principal relief, there may be other reliefs such as: an order for the custody of the children of the marriage and where the wife is presenting the petition (WD) then she might pray the court for an order for the maintenance of the children of the marriage.

The reliefs sought by the parties actually depend on the peculiar circumstances of each case.

Having considered the various aspects of a petition for a decree of dissolution, there is one aspect which is very important. It is the concluding part of the petition which commences with “This Petition is settled by” and ends with the signature of the legal practitioner who settled the petition. The petition must be signed by the petitioner or by his legal practitioner where he is represented by one.

Having considered the various particulars which are required by the Rules to be stated in a petition, below are samples of two petitions to illustrate the complete document after drafting. What is meant here by complete document is just the petition alone. However it should be borne in mind that every petition must have attached with it five (5) additional and very important documents without which the petition itself is not only incomplete but unacceptable even for filing at the High Court Registry.

These five documents speak for themselves. Hence there is no need to examine them one after the other as was the case above when the various subheads in a typical petition were considered alongside with the provisions of the Matrimonial Causes Rules. These five documents are as follows:

- i. Notice of petition for Decree of Dissolution
- ii. Verifying Affidavit
- iii. Certificate Relating to Reconciliation
- iv. Acknowledgement of Service
- v. Copy of Marriage Certificate/Certified True Copy

Now attached to the two petitions to be sampled below are the above five documents. The two samples below represent a complete sample of a petition, a Decree of Dissolution of Marriage. The next stage with regard to petition for decree of dissolution of marriage is the filing of the documents so far prepared at the Registry of the High Court.

But before doing so we shall consider other petitions such as:

- i. Nullity of Marriage.
- ii. Judicial Separation
- iii Restitution of Conjugal Rights
- iii. Jactation of Marriage

CONDONATION, CONNIVANCE AND COLLUSION

The Petitioner has not condoned or connived at any of the ground specified above and is not guilty of collusion in presenting this petition.

ORDER SOUGHT

The Petitioner seeks the following Order:

A Decree of Dissolution of marriage between the Petitioner and Respondent on the grounds of Cruelty and desertion and intolerability.

This Petition was settled by Ike Ogbonnaya, Esq., Legal Practitioner to the Petitioner.

Filed on the day
of..... 2009

By Ike Ogbonnaya Esq. Legal Practitioner on behalf of the Petitioner whose address for service is No. 55 Western Avenue, Surulere, Lagos State.

Illasi Okon.
(Petitioner Counsel)

**MATRIMONIAL CAUSE ACT 1970
IN THE HIGH COURT OF LAGOS STATE
HOLDEN IN IKEJA DIVISION
NOTICE OF PETITION FOR DECREE OF DISSOLUTION OF
MARRIAGE**

SUIT NO .

BETWEEN

MR. Ayo Awodiya Petitioner
MRS. Olu Awodiya Respondent

TO MRS Olu Awodiya of 10, Chai Road, Songotidare Lagos State.

1. Take notice that a petition has been presented to the above named court by Mr. Ayo Awodiya Songhai Road, Songhai, Lagos, instituting proceeding for a decree of dissolution of marriage.
2. A sealed copy of the petition is delivered to you with this notice.
3. If you intend to consult a solicitor in connection with the proceedings you should take to him all the documents delivered to you.
4. If you desire:
 - (a) To deny any facts alleged in the petition.
 - (b) To allege any additional facts for the consideration of the court.
 - (c) To submit to the court that it should dismiss any of proceedings instituted by the petition or
 - (d) To make any other submissions to the court, you should file an answer to the petition.
5. If you wish to institute proceedings for dissolution of marriage, nullity of marriage, judicial separation or answer to the petition filed by you. If you institute proceedings for the dissolution of marriage on the grounds that the petitioner has committed adultery, you may also, by the answer, institute proceedings for damages in respect of the adultery.
6. If you wish to institute proceedings for the purpose of seeking an order with respect to maintenance for yourself, a settlement, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage you should do so by filing an answer to the petition. If you fail to do this, you will have to obtain the leave of the court to institute to proceedings.
7. If you do not wish to file an answer but wish to receive a copy of each document filed in connection with the proceedings, you should file a notice of address for service. However, unless you file an answer, you will not, without the leave of the court, be entitled to furnish evidence to the court or address the court, at the trial of the proceedings and the court may hear and determine the proceedings in your absence.
8. Any answer or notices of address for service filed by you must be filed within....days after you receive this notice or within such extended period as the petitioner or the court allows and service of a copy of the answer or notice must be effected in accordance with the Matrimonial Causes Rules.

Dated this day of..... 2009.

Registrar

**IN THE HIGHCOURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA**

SUIT

NO.

BETWEEN

MR.Ola Awofesu Petitioner AND

MRS Ayo Awofesu Respondent,

VERIFYING AFFIDAVIT

I, Mr. Ayo Awofesu, Nigeria citizen, Male, Christian, Trader residing at 10, Songahi, Songali, Lagos State make oath and state as follows:

1. That I am Petitioner in this suit.
2. That I verify the facts stated in my petition by virtue of my personal knowledge of same.
3. That the statements set forth in paragraphs 1 to 10 of my petition are true and correct to the best of my knowledge, information and belief.

.....

DECLARANT

Sworn to at the High Court Registry

Ikeja this day of 2009

**BEFORE ME
COMMISSIONER FOR OATHS**

**MATRIMONIAL AUSESACT 1970
IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA DIVISION**

SUIT NO.

BETWEEN

MR Ola Awofesu Petitioner AND
MRS Ayo Awofesu Respondent

CERTIFICATE RELATING TO RECONCILIATION

I, Illasi Okon ESQ. certify that I am the solicitor representing the petition and that I have brought to the attention of the Petitioner the provision of the Matrimonial Causes Act relating to reconciliation of the parties to the marriage and the approved marriage guidance organisations reasonably available to assist in effecting a reconciliation between Petitioner and the Respondent and the possibility of a reconciliation between the Petitioner and Respondent being effected either with or without the assistance of such organisation. ..

Dated this..... day of..... 2009

.....
Illasi Okon. ESQ.

SOLICITOR TO THE PETITIONER

**ACKNOWLEDGEMENT OF SERVICE
MATRIMONIAL CAUSES ACT 1970
IN THE HIGH COURT OF LAGOS STATE
IKEJA DIVISION**

SUIT NO.

BETWEEN

MR. Ola Awotesu Petitioner AND
MRS. Ayo Awotesu Respondent

I, MRS. Ayo Asotesu, acknowledge that on the day of2009 at,I received:

- a) A sealed copy of the petition in these proceedings (or as the case may be), and
- b) A notice of petition (or notice of proceedings) addressed to me.

I also acknowledge that I am the person referred to in the sealed copy of the petition as the Respondent and that I am the person to whom the notice of petition is addressed.

That I am the person to whom the notice of petition is addressed Dated
This day of 2006.

Dated this day of 2006.

4.0 CONCLUSION

We examined the court process in respect of dissolution of marriage according to the Matrimonia Causes Act. It is possible for one of the parties to bring an action for the annulment of the marriage in the law court if all the conditions precedent are fulfilled.

5.0 SUMMARY

This unit has taught:

The grounds on which a marriage can be dissolved
The filling process
The guiding rules

6.0 TUTOR-MARKED ASSIGNMENT

1. List the steps involved in presenting a divorce petition to the law court.
2. Describe the essence of Order V of the Matrimonia Causes proceeding.

7.0 REFERENCES/FURTHER READING

Sagay, I. (1999). *Nigeria Family Law, Cases Principles and Statute*. Lagos: Mathouse Publisher.

Onokah, M. C. (2003). *Family Law n Nigeria*. Enugu: Spectrum Publishers.

Nwogugu: (2001). *Family Law in Nigeria*. Ibadan: Heinemann Educational Books.

Aderibigbe, Remi (2004). *Family Law in Nigeria*. Lagos: Codes. Publishers.

Matrimonial Causes Acts and Rules.