

**AN ABRIDGEMENT OF NIGERIAN
MATRIMONIAL LAWS AND THE CHURCH**

A PAPER PRESENTED

BY

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**AT THE SEMINAR ORGANISED FOR
THE MEMBERS OF THE MARRIAGE COMMITTEE
OF THE DEEPER LIFE BIBLE CHURCH**

INTRODUCTION:

Marriage is a universal institution which is recognized and respected all over the world. As a social institution, marriage is founded on, and governed by the social and religious norms of society. As a legal institution, marriage is a form of contract regulated by law.

The marriage institution originated from God and was ordained by God. Shortly after the creation of Adam, the Lord God caused a deep sleep to fall upon him and while he slept, the Lord took one of his ribs, created Eve and presented her to Adam as his wife. Thereafter the Lord enacted the first legislation on marriage in the following words:

“Therefore shall a man leave his father and his mother, and shall cleave unto his wife and they shall be one flesh”¹ (underlining mine).

A cursory examination of this first law on marriage may give the impression that it is mandatory for all men to marry. The use of the word shall seems to convey this mandatory impression. But scriptures must interpret scriptures. Our Lord Himself was never married and he explained that there are some people who have made themselves eunuchs (celibates) for the sake of the kingdom of heaven.²

Paul the apostle was celibate and he bluntly cautioned against marriage in the following words. “-----seek not a wife”³

Broadly speaking, there are basically two systems of marriage under Nigerian Law, to wit: the monogamous (one man one wife) and the polygamous (permits more than one wife). These two systems differ fundamentally in character and incidents. It is therefore important to keep this dualism in view in our consideration of the marriage laws in Nigeria, in order to avoid any confusion. The two systems are regulated by different kinds of laws.

In Nigeria, a monogamous marriage strictly speaking is classified as marriage under the Act. This form of marriage is regulated by the provisions of

1. Genesis 2: 24(KJV)
 2. Matthew 19: 12 (KJV)
 3. 2 Corinthians 7 : 27 (KJV)

the Marriage Act⁴, a federal legislation binding on all the states of the Federal Republic of Nigeria. On the other hand, a polygamous marriage is a customary law institution.

Therefore, the character and incidents of that system are governed by customary law. Incidentally, there is no single uniform system of customary law prevailing throughout Nigeria. The customary laws differ from one locality to another.

In this paper we shall commence with a consideration of the essential features of marriage under customary law. Next we shall examine the procedure for marriage under the Act. Then we will look at some incidents of void and defective marriages, marriage offences and finally draw the curtain on the subject.

2.1 CUSTOMARY LAW MARRIAGE

Under our indigenous customary laws, marriage is essentially a union of a man and a woman for the duration of their lives, involving a wider association between two families or sets of families.

In Nigeria, polygamy is a customary law institution. So legally speaking, every customary law marriage is potentially polygamous. Our traditional African societies permit the practice of polygamy. This is a direct fall out of the practice of the African Traditional religion which is basically ungodly.

But as true Africans it is the norm that notwithstanding your religious inclinations, in order for your marriage to have credibility at the grass root level, you must fulfil the customary requirements culminating in a customary law marriage.

In the eyes of the law, a customary law marriage is a complete and a perfect marriage. The parties are in a legitimate matrimonial union. They need not go further to contract another form of marriage under the Act. However majority of enlightened people do not stop at the level of a customary law marriage. They usually proceed further to contract another marriage under the Act. The reason for their action is not farfetched, as we have stated earlier, the customary law marriage is potentially polygamous. The only safety measure to

⁴ Chpt.218, Laws of the Federation of Nigeria,1990; Vol.8, Cap.M6, Laws of the Federation of Nigeria, 2004.

prevent polygamy is to go further to contract another marriage under the Act to prohibit polygamy.

In essence when people contract a valid customary law marriage and go further to contract the one under the Act, they have contracted two different marriages. This is what we practice in the church. We marry under customary law and we marry under the Act. So we render to Caesar what belongs to Caesar and to God what belongs to God.⁵

We shall now consider the elements of a valid customary law marriage.

2.2. ESSENTIALS OF A VALID CUSTOMARY LAW MARRIAGE

The essential requirements for a valid customary marriage may be classified under 4 broad heads. These are:

- (a) Consents
- (b) Capacity
- (c) Bride Price or Dowry and
- (d) Formal Giving Away.

We will examine these in turn.

(a) Consents

There are two consents involved. The consent of the family (parental consent) and the consent of the prospective spouses themselves. In modern times, family consent is now synonymous with parental consent. Here the parent may be the actual parents or the guardian. As for the wider family, their consent is no longer required as a general rule. A father may still consult with his wider family before he gives or withholds his consent to his children's marriage; but this is a matter of courtesy and not of necessity.

However in the case of a man, parental consent can be dispensed with if the man is of age. An adult male has a right to conduct all the necessary negotiations for his marriage without the consent of his parents, though this is quite unwise and may prove problematic.

The consent of the spouses themselves is a key factor. In traditional society, the consent of the spouses was deemed irrelevant. Parents were known

5. Matthew 22:21 (KJV)

to have contracted marriages on behalf of their infant children. But as the adage goes, you may force a horse to the river but you cannot force the horse to drink water. Some of those marriages contracted without the consent of the spouses have proved problematic.

In modern society, the practice is to ask for the consent of the prospective spouses. Most marriages in fact start with the agreement between the spouses; their parents come into the picture later on.

So vital is the issue of consent that it is a criminal offence for any person to take away or detain or cause a female to be so dealt with against her will, for the purpose of marriage. The offence is a felony which attracts imprisonment for seven years.⁶

(b) Capacity

In relation to marriage, capacity has two aspects. These are (i) capacity to marry on the part of each prospective spouse; and (ii) capacity to inter-marry i.e. to marry each other.

(i) Capacity to marry:

At customary law, a person may lack the capacity to marry if he is under age depending on the particular custom. However, under customary law, a woman who is lawfully married cannot marry another man. The practice of polyandry or marriage with more than one husband is not allowed under any custom in Nigeria. Furthermore, even though polygamy is allowed, a man who is already married to a woman under the Act cannot marry another woman under customary law.⁷

(ii) Capacity to inter-marry

Under every custom, there are certain prohibited degrees of marital relationship. For example, a man may not marry a woman who belongs to his father or mother's family. Also a man may not marry two full sisters at the same time. Of course, marriage between siblings is prohibited.

(c) Bride Price or Dowry

The two terms "bride price" and "dowry" are used interchangeably.

6. Section 361 of the Criminal Code.

7. see sections 35 and 48 of the Marriage Act.

They mean “a customary gift made by a husband to or in respect of a woman at or before marriage.”⁸ The dowry can be paid by the husband or by his parents, guardian or by his lawful representatives.

The amount of bride price may be fixed by a particular custom or it may be subject to individual bargaining and a host of factors such as the status of the bride, or family etc. Though the bride price is an essential element in customary marriage, it is perfectly proper for the bride’s family to waive it or take a token sum. Essentially, the bride is not for sale.

Generally, the bride price is payable to the parents of the bride. Part of the bride price is distributed to other members of the family such as uncles, aunties and the siblings of the bride.

(d) Giving away the bride

The conclusion of the customary marriage ceremony is the handing over of the bride by her parent or guardian to the bride groom or his representative. In some societies, the ‘giving away’ ceremony is done in the home of the bride or some other place chosen by her family. In other societies, the ceremony is conducted in the bridegroom’s place, the bride being escorted there for this purpose by members of her family.

3.1 MARRIAGE UNDER THE ACT

A marriage under the Marriage Act is sometimes referred to as Christian Marriage. Strictly speaking, this form of marriage is monogamous in nature. A marriage under the Act may be either by a Registrar’s certificate issued after due notice and publication, or by a special licence issued by the Minister of Internal Affairs.

As we have already explained, it is a common practice for couples to first of all contract their marriage under customary law and then proceed to execute the same contract under the Marriage Act. The former is rooted in our native customs and traditions while the latter is of English extraction. The procedures and the formalities are strictly regulated by statute, to wit: the provisions of the Marriage Act.

8. Section 2, Marriage, Divorce and Custody of Children Adoptive Bye-Laws Order, 1958.

3.2. PROCEDURE FOR MARRIAGE UNDER THE ACT

We will proceed to articulate the preliminaries culminating in the celebration of marriage under the Act.

(a) Notice

Whenever any persons desire to marry under the Act, one of the parties to the intended marriage (usually the man) shall sign and deliver to the registrar of marriages in the district in which the marriage is intended to take place, a notice as in Form A in the First Schedule to the Act. The notice shall declare:

- (i) that the parties intend to marry each other within three months from the date of the notice;
- (ii) the names of the prospective bridegroom and bride;
- (iii) the marital status or condition of the parties (i.e. whether bachelor, spinster, widow or widower);
- (iv) their occupations, ranks or professions;
- (v) their respective ages;
- (vi) their dwelling places;
- (vii) whether or not consent has been given and if so by whom it was given⁹

If the person giving the notice is an illiterate, the notice must first be read over to him, after which he may append his signature or thumbprint on the notice in the presence of a literate person who shall attest it.¹⁰

The registrar of marriages must then enter the said notice in the marriage notice book, and cause a copy of it to be published by being affixed on the outer door of his office and being kept exposed there until a certificate to marry is granted or until the expiration of three months, whichever happens first.¹¹

(b) Certificate to marry

After twenty-one days of the publication of the notice, and within three months of the said publication, the registrar may issue a certificate authorising the parties to marry; provided that he has been satisfied by affidavit as follows:

9. See Section 7 and Form A, First Schedule, Marriage Act
 10. Section 8
 11. Section 10

- (i) that one of the parties at least has been resident within the district for not less than fifteen days from the date of the granting of the certificate;
- (ii) that both parties (not being widowed) are twenty-one years old; if either of them is under twenty-one it must be shown that the necessary consent has been obtained in writing;
- (iii) that there is no impediment of kindred or affinity or any other lawful hindrance to the proposed marriage;
- (iv) that neither of the parties to the intended marriage is already married to a third party under customary law.¹²

A registrar's certificate authorising a couple to marry becomes void if the intended marriage does not take place within three months of the date of the original notice. This means that a registrar's certificate to marry is only valid for about nine weeks. That is three months from the date of the notice, less three weeks which must elapse before a licence could be issued or the marriage celebrated.¹³

(c) Special licence

The Minister of Internal Affairs may grant a special licence for a proposed marriage if it is shown to his satisfaction:

- (i) that there is sufficient cause why the usual preliminaries regarding notice, publication and registrar's certificate should be dispensed with;
- (ii) that there is no lawful impediment to the proposed marriage; and
- (iii) that the necessary consents, if any, have been obtained.

The special licence shall be according to **Form D** in the First Schedule to the Act and shall authorise the celebration of the marriage by a registrar or by a recognised minister of some religious denomination or body¹⁴

(d) Parental Consent

Where either party to a proposed marriage is a minor (i.e. a person under the age of twenty-one years), the consent of his or her parent or guardian

12. Section 11(1)

13. See again section 11(1), to appreciate the calculation

14. See section 13

must be obtained before a licence can be granted or a certificate issued. But this consent is not required where the minor is a widow or a widower.

The person who is primarily required to give such consent is the minor's father; but if he is dead or of unsound mind or absent from the country, the mother may consent. If the mother too is dead or of unsound mind or absent from the country, the minor's guardian may consent.¹⁵ Such consent must be in writing and must be annexed to the affidavit accompanying the notice to the Registrar.

An illiterate parent or guardian may sign the consent letter by placing a mark or cross thereon in the presence of a judge of the High Court, an administrative officer, a justice of the peace, a magistrate, a registrar of marriages, a medical officer in the services of the Government or a minister of religion.¹⁶ Such a signature or mark must be attested by the person before whom it is made.¹⁷

Where the infant party to a proposed marriage has no parent or guardian residing in Nigeria and capable of consenting to the marriage then any of the following persons may consent to the marriage in writing, if satisfied that the marriage is a proper one:

- (i) a Governor;
- (ii) a High Court judge or
- (iii) any officer of or above the grade of assistant secretary¹⁸

(e) Caveat

A caveat is a warning. Any person whose consent to a minor's marriage is required under the Act, or any person who knows or claims to know of any just cause why a proposed marriage should not take place, may enter a caveat against the issue of the registrar's certificate. This is done by writing against the entry of the notice in the marriage notice book the word "**Forbidden**", and appending his name and address thereto, as well as his grounds for objection to the marriage.¹⁹ If however, the person objecting to the marriage is illiterate, he may give his notice orally, the necessary entry in the marriage notice book being then made on his behalf by the registrar.²⁰

15. Section 18

16. Section 19 (1)

17. Section 19 (2)

18. Section 20

19. Section 14 (1)

20. Section 14 (2)

Upon a caveat being thus entered against a proposed marriage, the registrar shall refer the matter to a judge of the High Court, who in turn will summon the parties to the marriage and the caveator (person who filed the caveat) to appear before him in court. The caveator is then required to show cause why the registrar should not issue his certificate. The matter shall be tried summarily and the judge will give his verdict subject to a right of appeal.²¹

If the judge decides that the certificate ought to be issued, he shall remove the caveat by cancelling the word '**Forbidden**' in the marriage notice book. The registrar shall then issue the certificate and the marriage may proceed as if the caveat had not been entered. The time that has elapsed between the entering and the removal of the caveat shall not be computed in the period of three months earlier stipulated.²² Where it appears that a caveat was entered on insufficient grounds, the judge may award compensation and costs to the injured party.²³

(f) Celebration of marriage

Sequel to the foregoing preliminary proceedings the process comes to a climax upon the celebration of the marriage. This is also called the solemnization of the marriage. It is a formal ceremony to publicly declare the marriage.

A marriage may be celebrated either in a church duly licensed for the celebration of marriages, or at a marriage registry, or any other place indicated in the special licence where this is used.²⁴ We shall briefly consider the three options:

(i) Celebration of marriage in church

A marriage may be celebrated in any licensed place of worship by any recognised minister of the church, denomination or body to which such place of worship belongs, and according to the rites or usages of marriage of the body. The ceremony must take place with the doors open, and in daylight hours, to wit, between 8.00 am and 6.00pm and in the presence of at least two witnesses apart from the officiating priest.²⁵

At the close of the ceremony, a marriage certificate must then be signed in duplicate by the officiating priest, the married couple and two or more witnesses to the marriage. The married couple must be given one such certificate, while the other must be forwarded to the local registrar of marriages who shall file the

21. Section 15

22. Section 16

23. Section 17

24. See Sections 21, 23 and 27 of the Act.

25. Section 21

same in his office.²⁶

(ii) Celebration of marriage at the marriage registry

The parties to the marriage are entirely at liberty to celebrate their marriage at the marriage registry before a marriage registrar. This procedure is what is commonly referred to as “court marriage.” It is very suitable to people without any religious beliefs and for some Christians who have some difficulties getting their church to solemnize their marriage for them. The marriage registry is a ready alternative.

Under this arrangement the marriage registrar assumes the role of the officiating minister. He commences by asking them in turn if they are before him for the purpose of becoming man and wife. If they answer in the affirmative, he pronounces them legally married and informs them that their union cannot be dissolved except by a valid judgment of a court of law. He warns them that if they contract another marriage during the subsistence of the present one, they would be guilty of the offence of bigamy.²⁷ Thereafter, the parties, their witnesses and the registrar will sign the marriage certificate, one copy is given to the couple and the other copy is kept by the registrar. Such marriage must take place between 10.00am and 4.00 pm, with open doors and before two witnesses.

(iii) Celebration of marriage under special licence

The celebration of this form of marriage must be in accordance with the formalities prescribed for marriages in the church or in the registry as the case may be, except that it need not be in either of these two places.²⁹ However, it appears that even when the marriage is authorized to be celebrated in any other place, the person officiating there must be either a minister of religion or a registrar of marriage.³⁰

4.1 VOID AND DEFECTIVE MARRIAGES UNDER THE ACT

Sometimes, a marriage celebrated pursuant to the provisions of the Marriage Act may suffer some irregularities which may affect the validity of the marriage. Sometimes when the irregularity is on a fundamental issue, this may invalidate the marriage.

At other times, the irregularity may be insufficient to vitiate the marriage and such minor irregularities can be waived.

26. Section 26

27. Section 27

28. Section 28

29. See section 29 of the Act which authorizes the celebration in any other place.

30. See again section 29.

It will be expedient for us to consider some instances of such irregularities in order to avoid them in our marriage processes. We may consider them under two distinct sub-headings to wit: fundamental defects and non-fundamental defects.

4.2 FUNDAMENTAL DEFECTS

A marriage under the Act is automatically null and void where either of the parties thereto is, at the time it is celebrated, married to a third party under customary law.³¹ This is because as we stated earlier on, a party who is lawfully married under customary law has no legal capacity to contract a marriage under the Act with any other person other than the person to whom he/she is married under customary law.³²

Furthermore, a marriage celebrated under the Act in any of the following circumstances is also null and void:³³

- (i) if both parties knowingly and willfully marry in any place other than a licensed church, a marriage registry or a place named by the Minister in a special licence where one is used;
- (ii) if both parties knowingly and willfully marry under a false name or names or acquiesce in such marriage.
- (iii) if both parties knowingly and willfully marry without a registrar's certificate and without a special licence.
- (iv) if both parties knowingly and willfully agree to be and are married by a person other than a recognised minister of religion or a registrar of marriages.

4.3 NON FUNDAMENTAL DEFECTS

Apart from the circumstances enumerated above as fundamental defects, no marriage which has actually been celebrated, shall be deemed to be void by reason only that any other provision of the Marriage Act has not been complied with. Thus even a marriage where one or both parties are under aged but which was celebrated without the necessary parental consent is a valid marriage nonetheless.

Similarly, where the marriage is not celebrated with the doors opened, or during daylight hours, or before at least two witnesses, or where the parties or

31. See section 33 (1) of the Act

32. See section 35

33. See section 33(2)

their witnesses, or both, fail to sign the marriage certificate as required by the provisions of the Act, all such irregularities cannot invalidate the marriage. For example, in the old case of *AGBO V UDO*³⁴, the plaintiff contracted a marriage under the Act with his wife.

At the time of the marriage, the woman was under aged, but they did not obtain the written consent of her parents before the marriage was celebrated. During the marriage, the woman committed adultery and the man sued for divorce. During the divorce proceedings the validity of the marriage was challenged on the ground of lack of parental consent. The court held that notwithstanding the absence of parental consent, the marriage was valid under the Act.

5. OFFENCES RELATING TO MARRIAGE

There are certain acts or omissions which may arise in the course of the process of contracting a marriage which constitute criminal offences under the law. It will be expedient to examine some of them in order to avoid them. A prudent man foreseeth the evil and hideth himself but the simple pass on, and are punished.³⁵

As already stated, it is an offence punishable by five years imprisonment for any person who is already married under customary law to contract a marriage under the Act, with a third party during the subsistence of the customary marriage.³⁶

Conversely, a person who is married under the Act renders himself liable to imprisonment for five years if he subsequently contracts marriage to another person under customary law.³⁷

It is an offence punishable with imprisonment for up to five years for any person to perform a ceremony of marriage knowing that he is not qualified to do so.³⁸ It is also an offence punishable with five years imprisonment for any person to perform or witness a ceremony of marriage as a marriage officer knowing that any of the legal requirements of a valid marriage has not been fulfilled.³⁹ This means that a priest or a marriage registrar who knows one or more of the requirements of a valid marriage under Act has not been carried out and yet

34. (1947) 18 N.L.R. 152
 35. Proverbs 27:12; 22:3
 36. Section 47 of the Act.
 37. Section 48
 38. Section 42
 39. Section 42

performs the marriage ceremony will be guilty of an offence, whether the irregularity was fundamental or not.

On the other hand, it is an offence punishable with two years imprisonment for any person to attempt to prevent a marriage from taking place, by pretending that his consent to the marriage is required, or that any person whose consent is required does not consent, or that there is any legal impediment to the marriage, if he does so knowing that such pretence is false or without reason to believe that it is true.⁴⁰

Whoever, being under a duty to fill up the certificate of a marriage celebrated by him or the counter foil thereof, or to transmit the same to the registrar of marriages, willfully fails to perform such duty, shall be liable to imprisonment for two years.⁴¹

Whoever personates any other person in marriage or marries under a false name or description, with intent to deceive the other party to the marriage, shall be liable to imprisonment for five years.⁴²

The above are by no means the complete list of the offences that may be committed by parties involved in the marriage process, but these have been highlighted to put us on our guards to prevent avoidable infractions of the law. To be forewarned they say, is to be forearmed!

6. CONCLUSION

The work of the Marriage Committee is of strategic importance to the Church as a whole. The committee serves as a clearing house for all marriages conducted in the church. The members of the committee are like midwives involved in the birth of new families into the body of Christ. The moment a marriage is conducted a new family is born.

The functions of the marriage committee must be carried out within the framework of the scriptures and the laws of the land. It is a matter for great concern that religious bodies in Nigeria are often very eager to celebrate marriage according to their respective rites without regard for the law. Many marriages are conducted in places which are not licensed for the celebration of marriages under the Act. In a great number of cases, little or no attention is given to the provisions of the Marriage Act. Many denominations conduct what they style '**church marriage**' without complying with the procedures stipulated by statute. The futility of such exercises only become apparent when there is a litigation in court challenging the legal status of the marriage. In the old case of

40. Section 41

41. Section 43

42. Section 44

OBIEKWE V OBIEKWE⁴³, the court was called upon to determine the validity of a marriage celebrated at the Holy Ghost Roman Catholic Church, Enugu on 30th, December, 1961, without the parties thereto complying with the provisions of the Marriage Act. The learned trial judge after commenting on the indifferent attitude to the law stated thus:

“As the law of Nigeria confers upon priests and ministers of religion the right to officiate at marriages recognised by the state, it is their duty to make themselves familiar with the ordinance and to see that people who come to them to be married understand their legal position”

The court held that the concept of church marriage is unknown to law. Since the ceremony was not conducted in accordance with the provisions of the Act, the ceremony in the Church did not make any scrap of difference to their legal status.

There is the prevalent practice among some denominations to perform ‘**church blessing**’ of marriages conducted without complying with the provisions of the Act. For instance, some people after contracting a customary law marriage, they come to the church for church blessing.

For the avoidance of doubt, such ‘**church blessing**’ does not constitute a marriage, nor does it add anything to an existing civil marriage. In the case of MARTINS V ADENUGBA⁴⁴, a priest blessed a customary law marriage on 17th September, 1942. He issued, in a printed form, a certificate to the parties in respect of that ceremony. Later one, one of the parties contended that there was a valid marriage under the Act.

The party tendered the church certificate to prove the point. The court held that the ceremony of the 17th of September was merely the blessing of a customary law marriage and therefore did not constitute a marriage under the Act.

In the light of the foregoing, it is incumbent on the hierarchy of the various churches to bring to the attention of their ministers and members, the importance of complying with the laws of the land in respect of marriage. It is in this vein that we must highly commend the initiative of the church to organise this all important seminar to educate and up-date the members of the Marriage Committee on some salient legal issues involved in the discharge of their functions.

We have restricted the scope of this presentation to the provisions of our

43. (1963) 2 E.N.L.R 196

44. (1959) C.L.R. 155

laws regulating the marriage process up to the point of the formal solemnization of the marriage. We did not extend the scope to other post marital issues such as the conjugal rights of spouses or the resolution of matrimonial disputes. This is because the targeted audience of this seminar is the members of the marriage committee, who ordinarily are not expected to regulate the affairs of spouses after the celebration of marriage in the church.

At this stage, I will draw the curtain on this presentation. I hope I have been able to shed some light on the provisions of the laws on marriage. I pray that the Lord grant you the wisdom and the grace to discharge your functions to His glory.

Thank you and God bless you.

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