

FAMILY – forming a relationship

Traditional definition of a marriage: “voluntary union for life of one man and one woman to the exclusion of others.” – *Hyde v Hyde*. No longer accurate for modern societies. It doesn't distinguish cohabitation from marriage, divorce is readily obtainable, *Gender Recognition Act 2004* – marriage no longer restricted to those born male/female, polygamous marriages are permitted in other countries. For marriage to be valid, need to consider two elements: do both parties have the **capacity** to enter the marriage AND have the correct **formalities** been observed?

CAPACITY

S 1-3 and sch 1 Marriage Act 1949 and ss 11-13 Matrimonial Causes Act 1973. 5 elements to consider:

1. male and female
2. age requirement
3. prohibited degrees of relationship
4. already married/has entered into a civil partnership
5. mental capacity

FORMALITIES

- *Found in *Marriage Act 1949*
- *Failure to follow formalities could result in marriage being void/voidable
- *Protect sanctity of marriage
- *Different formalities for religious/civil ceremonies
- *Venue must be registered with state unless: C of E, Quaker/Jewish ceremony

Three types of formalities:

1. **Preliminary procedures** – all parties must publish intention to marry.

a) Civil ceremonies (*Part 3 Marriage Act 1949*) – obtain superintendent registrar's cert, give notice in person of district in which they reside of intention to marry, publicized into marriage book (open to the public), 15 day wait until issue cert unless reason not to, couple have 3 months to marry.

b) Anglican ceremonies (*Part 2 Marriage Act 1949*) – parties must publish intention to marry by either publishing banns (cheapest method) OR obtain common licence of superintendent's register certificate.

c) Non-Anglican (quaker/jewish) – same as civil ceremonies.

2. Ceremony

a) must be open to the public

b) according to formalities of religion or in approved/registered premises.

c) to be approved, must be permanent, secular and available to other members of the public.

d) civil ceremony requirements: phrasing, register office/approved premises, in presence of 2 witnesses.

e) Anglican ceremony- place of worship where banns were published in accordance with the rites of the CoE and solemnized by a person in the Holy Orders.

f) Non-Anglican ceremony – no formal requirements other than in accordance with the relevant religion.

3. **Registration** – same for all marriages – s 53 marriage act 1949. Registration is crucial as it provides a public record & proof for parties involved.

CIVIL PARTNERSHIP – CPA 2004

CAPACITY

CPA 2004 – ss 3, 4. Similar to marriage.

FORMALITIES

CPA 2004, ss 5-7. Similar to civil marriage but no religious service (s2(5)) and no specific words required. Registered once both parties have signed civil partnership document (s2(1)).

REFORM

1. Unification of preliminary procedures.
2. use of internet to publicise intention to marry.
3. more choice as to where and when ceremony is to be held.
4. new system of celebrants appointed to conduct ceremony.

NULLITY – never existed. Differs from divorce and dissolution.

VOID – never existed.

1. s11 MCA 1973/ss 3 and 49 CPA 2004 states on grounds on which marriage/CP will be void:
- a) prohibited degree of relationships
 - b) under age of 16
 - c) disregard for formalities – *Gereis v Yagoub/A-M v A-M*
 - d) lawfully married/CP
 - e) not male or female
 - f) polygamous marriage

NON-MARRIAGE – completely removed from a marriage ceremony. Depends on facts – *B v I* (forced marriage)

VOIDABLE – subsists until decree is issued annulling it (*de Reneville v de Reneville*) – s12 MCA 1973/s50 CPA 2004

- a) lack of valid consent – duress (*Hirani v Hirani*); mistake (*Valier v Valier/Mehta v Mehta*); sound mind (*Parke/Sheffield CC v E*).
- b) mental disorder
- c) registered by another at time of marriage/CP
- d) grounds relating to gender recognition

Grounds that just apply to marriage:

- a) inability to consummate (*D-E v A-G*) – sexual intercourse must be 'ordinary and complete' (*G v G; Singh v Singh*)
- b) willful refusal – *Horton v Horton; S v S (otherwise C)* – settled and definite decision reached without sufficient reason.
- c) respondent is suffering from a venereal disease.

BARS TO RELIEF

1. application for nullity may be barred under s13 MCA 1973 to prevent injustice.
2. similar to provisions in s51 CPA 2004.
3. voidable marriages only: knowledge of the petitioner and injustice to the respondent – s13 (1) MCA 1973; delay – petition must be brought within 3 years of date of marriage unless relying on consummation or issue of interim gender recognition certificate.

NOTE: The presumption of marriage – chief adjudication officer v bath - only in circumstances where there has been a ceremony of some kind and all issues point to status of 'married'. Cf *Martin v Myers*