

How can alice end the marriage with james law family essay

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Marriage: "The voluntary union for life of one man and one woman to the exclusion of others." This is traditional definition of marriage provided in case of Hyde v Hyde.^[1] Notion of Marriage is existing for years. Issue arising is that Alice Lemon and James Lemon marriage is a valid marriage? Parties to marriage : Alice v James For validity of a marriage we need to consider two elements 1: Do parties to marriage have capacity to enter into marriage? 2: Do correct formalities been observed? Capacity: Section 1-3 and Sch 1 Marriage Act 1949 and ss 11-13 Matrimonial Causes Act 1973 explains about the key elements for capacity that need to be fulfilled. Sex (Male & Female) Age Prohibited Degree of relationship Already Married Mental Capacity^[2] Relevant element is age here. As Alice was under 18 so she need consent from her parents for a valid marriage. But as Alice was not on talking terms with her parents which means she had not got valid written consent from her parents. The other way to get consent was that Alice might get consent from registrar for marriage. James had no hurdle to get married as he was 20 years old at time of marriage. Formalities: Marriage act 1949 give details about formalities of marriage. There are three categories of formalities Preliminary Procedure Ceremony Registration^[3] Part 3 of Marriage act 1949 illustrates civil ceremonies. Parties to marriage must publish intention to marry. Parties must obtain superintendent registrar's certificate, must give notice in person to superintendent registrar of district in which they reside of intention to marry. Superintendent will publicize the marriage. After 15 days Superintendent will issue certificate and then couple have three months to marriage. For Anglican Ceremonies Parties to marriage are required to publish intention to marry by publishing banns , by getting

superintendent's registrar certificate or by obtaining common or special licence. Quaker/Jewish follow the same process as that of civil ceremonies. Ceremonies must be open to public and couple must marry in a civil ceremony in registry office or in an approved place which has been licensed by the local authority. After ceremony couple must get registration under s 53 Marriage act 1949. Given facts do not clarify the situation and do not explain about preliminary procedure and whether parties got registered under s53 Marriage Act 1949. And for ceremonies not all failures to comply with the formalities related to a marriage which takes place in England and Wales will make marriage void. Even where the parties have not complied with those formalities which might make their marriage void, it will only actually be void if the parties intentionally ignored them[4]. Gereis v Yagoub (1997). If Alice & James had not fulfilled requirements of ceremony intentionally then their marriage will be void but in present case facts are not enough to illustrate whether they have followed procedure or not. Alice and James got married in Lomton country house. Facts do not tell about whether it was approved place licensed by the local authority. So under given facts this marriage is seems to be void. Gereis v Yagoub (1997). Issue (b)How can Alice end the marriage with James? In order to end marriage with James, first of all we have to apply One year rule. Section 3(1) of Matrimonial causes act 1973 states that " No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage."[5]This is because parties could rely on acts committed in first year. Alice can apply for divorce because her marriage to James is 12 years old. Next Alice need to show ground for petition of divorce that is

irretrievable breakdown according to s 1(1) Matrimonial Causes Act 1973 which states that " a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably." [6] Following step is to rely on one of five facts. One of five facts must be made to prove irretrievable breakdown. *Buffery v Buffery*. Section 1(2) Matrimonial Causes Act 1973 tells five facts; Adultery and intolerability" that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent" (s 1(2)(a) Matrimonial Causes Act 1973) Behaviour" that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent" (s 1(2)(b) Matrimonial Causes Act 1973) Desertion" that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition" (s 1(2)(c) Matrimonial Causes Act 1973) Living separate for 2 years and divorce with consent" that the parties of the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted" (s 1(2)(d) Matrimonial Causes Act 1973) Living separate for 5 years and no need of consent from respondent" that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition"

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According to facts, Alice can rely only on fact D and Fact E. There are two elements in section 1(2)(d) Matrimonial Causes Act 1973. Two years Separation Petitioner needs the consent of respondent Alice and James has

been living separate for 26 months including 8 months initial separate period and 18 months together under one roof for sake of their child Dexter but, according to facts, they didn't have any kind of physical relation, they were sleeping in separate rooms and they were doing their own laundry Mouncer v Mouncer. In Mouncer v Mouncer, husband and wife were living in one house but they were sleeping separate and had no physical relation. Both husband and wife shared rest of house and also they took meal together. They were living under one roof just to look after their child. Alice can get divorce if James consents to it. Otherwise Alice has other option of five years separation in which she doesn't need consent of James. But for this Alice has to wait longer. After facts, Alice must follow the divorce process. There are two kinds of procedures. Normal procedure and Judicial procedure. Normal procedure is easy to follow. Both parties consent the divorce and simple paper exercise is required. It is economical and quick. While judicial procedure is expensive as well as it takes more time. Judicial procedure is followed when defendant refused to consent divorce. After hearing court may issue decree nisi to Alice which is not divorce or final order of court. After issue of decree nisi court gives time of six weeks and only day to both parties if they can settle down down their problems or disputes and might they change their mind. After six weeks and one day time, court will issue decree absolute to Alice which is final document of divorce and marriage is ended after decree absolute. Following divorce process, Alice can get can marriage with Reg. Part CIn order to deal with the financial problems arising between parties the starting point for courts to follow is the statutory guidelines which are laying under section 25 of Matrimonial causes act 1973.

The guidelines provided in MCA 1973, s25 will be of relevance as an essential part of court's discretionary exercise in determining ancillary relief application.[8]Section 25(1) MCA 1973 enlightens the duty of court. " The duty of court when making any award is to take into account all the circumstances of the case but, in doing so, its primary task, but not its paramount one, is to consider of any minor child of the family under age of 18"[9]So first of all courts have to consider all circumstances of the case and first consideration is to children who are minor and are not over age of eighteen. In present case of James and Alice, couple has a child Dexter who is 7 years old. Dexter is dependent child of James and Alice so court have to consider the needs of child. After application of section 25(1) court will follow section 25(2) which provides an extensive list of factors to be considered. The factors are: s. 25(2)(a)- " the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire"[10]s. 25(2)(b)- " the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future"[11]s. 25(2)(c)- " the standard of living enjoyed by the family before the breakdown of the marriage"[12]s. 25(2)(d)- " the age of each party to the marriage and the duration of the marriage"[13]s. 25(2)(e)- " any physical or mental disability of either of the parties to the marriage"[14]s. 25(2)(f)- " the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the

family, including any contribution by looking after the home or caring for the family"[15]s. 25(2)(g)- " the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it"[16]s. 25(2)(h)- " in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring"[17]Now we need to apply factors of Section (25)(2) on current case. In case of Alice and James, S. (25)(2)(a) is relevant because of Income: James worked as an investment banker and earning upto £120, 000 per year while Alice is part time accountant earning about £25, 000 per year. Earning Capacity: Alice is part time accountant so she may increase her working hours and can earn competent salary (A v A (Financial provision 1998)) while James is already doing a better job. Property: Couple bought house after marriage which is the only asset of them. House is matrimonial property worth £1. 2 Million. 3rd Party assets: Alice may get benefit from Reg after getting married to him. s. 25(2)(b) is relevant because of basic needs of expenses and accommodation. Alice has low income and also has a dependent child to support. s. 25(2)(c) could be relevant because James belong to a very wealthy family while he is also earning handsome money while Alice is also working part. F v F (Ancillary Relief: Substantial Assets)(1995)s. 25(2)(d) could be relevant as they got married 12 years ago and age of Alice is 28 while James is 32 Years old. s. 25(2)(e) is not relevant heres. 25(2)(f) is relevant because contribution should be judges in non-sexist manner.(White v White [2001]) (Lambert v Lambert [2002])s. 25(2)(g) is not relevant heres.

25(2)(h) possibly relevant. Now court need to consider if Clean Breakup principle is suitable to apply. (s 25(A)(1)) Minton v Minton [1979] Clean breakup not Appropriate because Alice has a dependent child to look after and her income is not enough to support her. She has responsibility to look after her as well as job. it is not clear if Reg is going to support her child or not. James has no other obligation as he doesn't need to support any other family. Court will follow the Miller and McFarlane (2006) case to clarify the law do we need here. Three key elements set in the decision of Miller and McFarlane are important to be followed. Given acceptance of the relativistic nature of fairness, it is interesting to note that Lord Nicholls had little difficulty in expounding, with Baroness Hale's agreement, three elements of fairness: Fairness requires that needs of spouses and their children should be satisfied. Fairness requires Compensation to redress any future economic imbalance between parties as a result of the way in which they conducted their marriage. Last element in fairness is equal sharing of assets acquired during marriage.[18] Court will consider the needs of parties and it will consider if equal division of property will meet their needs. It is clear that Alice and James have only one matrimonial house as big asset. Next to clean breakup principle, Court will consider using orders available to them.

Financial Provision Orders:

Periodic payments: James will be required to make periodic payments to Alice as per order of court.(Parlour v Parlour 2004) Lump sum Order: As James belong to wealthy family and good earnings so court could order James to make a lump sum payment to Alice.

Property Adjustment Orders: (under s 24 MCA 1973)

Sale of Home: court's order to sell matrimonial house and divide 50: 50 among parties unless there is a good reason for one party to gain more.

Transfer of property: Alice could buy James share of property if she could raise mortgage which unlikely to happen here as her income is very limited.

Mesher/Martin Orders: Court may Apply Mesher order because Alice has child, Dexter, to look after.

Pension Orders:

Attachment order: when James will retire court could award a share of his pension to Alice. But if Alice get married to Reg, Then she will lose right to the income part of pension, and she may also lose the lump sum portion of the pension. Offsetting: Offsetting could be useful here because James has fairly large pension. This pension is due to his high income and earnings.

Pension Sharing order: under Welfare Reform and Pension Acts 1999 court could order to transfer a share of James' pension to Alice for her benefit. It is always costly to go court for financial arrangements. Alice does not have big income and assets to cover expenses of court. So Alice and James should agree outside of court on financial settlement. But Alice may apply to court for consent orders. At this stage it will not be too expensive to go to court. Court will analyze the agreement to make sure if it is fair. Na V Ma [2006]