

Family law essay example

[Law](#), [Criminal Justice](#)



There are some legal formalities and requirements of valid marriages in every civilised society. Under English law, every marriage is solemnised with a couple of formalities and liabilities that are to be followed by people who enter into a marriage. Marriage laws have become more relevant in today's society as they provide security and stability to couples, but at the same time, marriage laws have become more complicated in order to fulfil swelling incidents of divorces and breakups due to intolerance between couples and various other reasons. This paper proposes a discussion on English marriage laws in respect of some specific situations.

Lord Penzance has rightly interpreted the concept of marriage in *Hyde v Hyde* (1866) as "the voluntary union for life of one man and one woman to the exclusion of all others". Marriage is more than a contract, but at the same time, it is different from other contracts in various ways. In other contracts, parties may decide the terms and conditions of contract, but in marriages, the situation is different. Parties decide the terms and conditions are decided by the state and parties have to follow these conditions while entering into it or while exiting out from the contract.

Marriage related laws have evolved after a series of amendments in the United Kingdom. Prior to passing marriage act in England in the year 1949, all marriages were governed as per directions of the Church of England. Church used to decide the requirements for marriages, however, these requirements were directive in nature instead of being mandatory. After the passing of the marriage act by the parliament, a number of amendments have been made in the existing law in order to meet the emerging circumstances and to fulfil various types of demands of people regarding

marriages.

Now under English law, marriages must abide by all legal requirements in order to get legal recognition. Marriages that do not fulfil legal requirements, as prescribed under English law, may not get legal recognition even if they are solemnised according to norms of any community or religion. All marriages should fulfil the requirements prescribed by existing marriage acts since the marriage act of year 1949 till the date. Marriages should be solemnised and duly registered.

Marriages that are not solemnised as per existing and prescribed laws of England have various repercussions. There are huge differences between marriages that are legally recognised and marriages that are not considered legal. If marriages are not recognised as legal ones, they affect various social, financial and property related rights. Marriages, that are not recognised legally, also do not recognise financial rights and it may cease financial rights of husband and wives.

Unrecognised marriages can leave people, especially women, in vulnerable situations. They may not be able claim any right in their marital home or in husband's property in case of any marital dispute. Women should know whether they are into a legal marriage or not because it affects their rights and status. Merely living together is not sufficient and it does not give any special status to spouses. Under provisions of English law, ' Common Law' husband and wife does not get any recognition.

In order to get into a lawful marriage, it is important that couple who intends to get marry fulfil following criteria:

The couple should not be in close relationship. For example, they should not

be brother and sister.

It is important that couple are sixteen years old or above. If any partner is below 18 years, he or she needs to get the approval from the parents.

At the time of marriage, none of partner should be in to any civil partnership.

If any couple does not meet any of the above mentioned criteria, they cannot get into a legal marriage. If in case marriage has been performed in the presence of any above condition, then the marriage will not be considered as legally void. Which means marriage under the law will be treated as not existing. In the given case, Peter and Hannah both are not closely related and were over 18 years at the time of their marriage, but still their marriage cannot be considered legally void because Peter was already into a civil partnership with his first wife Jade.

According to English law, before registering marriage, both partners should provide a notice prior to at least 16 days of the marriage. Couple can place this notice in their local register office. The registrar of the local register office takes the information and place it in the public board located in register office for minimum 15 days time. It is importance that both partners give this notice. If any public person has any objection with the marriage or believes that both parties should or cannot get married, then he or she can raise their objection and marriage will not be certified till the objections get cleared.

In the event of no complaint or objection, registrar issues a marriage certificate to married couple that proves that they are legally married. The notice is generally not required if couples are getting married in any Anglican

church. However, for other types of civil marriages and religious marriages notice is required. Therefore, except marriages in Anglican Church all other marriages are required 16 days' notice or else marriage cannot be performed legally.

Under the court of law, a legally recognized marriage should be performed at any one of the following places: register office, Anglican Church, registered building, or approved premises. Registered offices refer to the official buildings of the local authorities such as Town hall. Approved premises refer to the buildings approved by the authorities such as stately homes, hotels and castles. Marriages performed in register office or approved premises should have civil procedure or ceremony.

In the marriages, performed in Anglican Church, couples are required to fulfil certain religious or otherwise obligations, before church authority agrees for the marriage of the couple. In case the marriage is performed in the church, the ceremony will be called a religious ceremony. Registered buildings are also religious premises that are registered for worship and other religious purposes but are not a church.

In civil ceremonies, both partners, prior to getting marry are required to mention that they fulfil all the criteria for a legal marriage, and under no circumstances or reasons they should be denied from exchanging vows. The civil marriage required presence of at least two witnesses. Civil ceremony is important for a legal marriage. Religious marriages can also be considered legal if performed by following correct procedure. For example, marriages in Church of England must be performed by a clergy member and in the presence of at least two witnesses along with following rules and regulations

of the Church.

Under English law, religious marriages cannot be legal unless they fulfil and comply with civil requirements. If a couple wants to get married at a religious place then they should have presence of authorized person in order to make their marriage legal. If marriage is performed in absence of authorized person then couple should also have civil marriage in order to have legal marriage. A legally recognized marriage must have marriage certificate from the authority.

As per the facts of the given case, Peter married Jade in the year 2004 and after vanishing of Jade, Peter met Hannah in Spain and married her after returning into England. Now the question arises whether Hannah's marriage to Peter is legal or illegal, void or voidable. The English law does not allow any man to enter into two marriages on the land of England. Thus if first wife is living, it is illegal to marry for a man second time in the England. However there is an exception of this law under The Offences Against The Person Act. If first wife is dead or missing for continuous seven years or the spouse has reasonable evidence to believe that his wife or her husband is dead then the living spouse can enter into second marriage. Here in the given case, Peter's first wife was vanished and he tried to find her, but he did not wait for her till seven years. He also had no reasonable evidence that his wife is dead or married to someone else. In the given scenario, Peter married Hannah on the soil of the England without an appropriate dissolution of his first marriage within a period of seven years.

Peters' act amounts to be an offense under section 57 of the Offences Against the Person Act 1861. Peter has committed the offense of bigamy

which is a punishable offense under English law. His second marriage with Hannah is void as he has married her on the soil of England without an appropriate dissolution of his first marriage. Peter's second marriage is void ab initio as per section 11 of the matrimonial act 1973. However, Hannah has right to file for annulment of her marriage.

Hannah had gave up her job of a teacher and she does not have any other mean to earn. Nullification or divorce does not seize rights of women to claim for financial relief thus Hanna has every right to receive financial relief from Peter after nullification of her marriage. She may claim financial relief for herself, as well as for her son George. She also may approach court of law for protection from Peter under various provisions of law.

IN THE LIGHT OF THE FACTUAL MATRIX:-

Despite the fact that sea-diving is a hazardous profession and subject to maximum fatality, However keeping the nature of job- assignment of Jade, she can still be presumed to be alive. The problem as to the exact whereabouts of Jade gets further compounded in light of the fact that Peter has only taken a casual approach towards finding Jade and after " simply trying to contact Jade, he gave up". Peter has not taken any concrete steps to locate the whereabouts of Jade. Hence, admittedly the marriage between Peter and Jade still subsists till date.

But there is a silver lining in the present case scenario, where continuous marital relation and cohabitation between Peter and Hannah for many years, prior to desertion by Peter, gives rise to the presumption that both Peter and Hannah have stayed as husband and wife. That the above hypothesis is also supported by the law of evidence which states that " continuous cohabitation

for a period more than 365 days in a given year gives rise to the presumption that the said spouses are husband and wife”.

There is not a single way of seeing things in law. Same thing can be interpreted differently by different people. Problems can be interpreted differently by victims and accused person in their favour. In marital disputes, things are even more complicated considering the apparent and continuous living of spouses in the same house. It becomes difficult to prove things sometimes as there is no any substantial evidence to corroborate allegations in marital disputes.

ANSWER TO QUERY NUMBER (1):-

As to the legal sanctity of the marriage between Hannah and Peter, the said marriage at the most can be described as a marriage of convenience and not a legally valid marriage. That Hannah is a Spaniard but got married to Peter in England, hence, even as per the law of the land, the marriage between Peter and Hannah is void ab initio. Thus in the backdrop of the said findings, Hannah is not the “legally wedded wife” and her marriage to Peter is invalid. As a consequence, she cannot claim the legal benefits as a normal wife would do out of a legal marriage. There are various grounds that decide and affect the legality of marriages under English law and the case of Hannah does not fall in the periphery of legal marriages.

ANSWER TO QUERY NUMBER (2):-

Since answer to the first query is in the negative, hence, the answer to this query also falls in the negative. As there is no valid marriage between Peter and Hannah, thus, she cannot seek any dissolution of marriage i. e. divorce

from Peter. Divorce is not available in cases, similar to Hannah under English law.

RELIEFS:-

(A) However, Hannah can approach the civil court/family court for declaration or annulment of her said marriage. She can even seek damages from Peter in respect of concealment of his subsisting marriage with Jade and she can also seek damages on the ground of fraud, misrepresentation, breach of trust. She can also file a separate criminal proceeding on the ground of cruelty, criminal intimidation etc.

(B) Admittedly, Peter has played smart and has intentionally concealed his subsisting marriage with Jade. Peter has also intentionally not entered into any nuptial bond with Hannah which explains his approach towards second marriage. However what has to be seen here is whether Peter at the time of entering into nuptial relation with Hannah has made some oral commitments as to her status, proprietary rights etc. If yes, then the same can be enforced in a competent court of law.

ANSWER TO QUERY NUMBER (3):-

As to the consequential orders arising out of divorce, no orders can be passed. However, modern day's jurisprudence across the world, recognizes the rights of person(s) who are concubines and people living in a 'live-in' relations. Thus, Hannah can claim compensation so far as maintenance and even claim alimony, past and future.

George has been born out of the wedlock of Hannah and Peter. Since their alleged marriage is itself invalid hence George is the illegitimate son of

Peter. That as per law, George is and will remain entitled to all the benefits as in case of any legitimate child. That George is entitled to the estate of Peter. Thus as per law, George can claim his rights in the house of Peter and can also claim maintenance till he attains the age of majority and starts to earn by himself. George will get relief if Hannah approaches a competent court of law in this regard.

ANSWER TO QUERY NUMBER (4):-

If Hannah chooses not to go for annulment of her alleged marriage and till such time when there is no reconciliation of dispute between Peter and Hannah, Hannah can invoke the jurisdiction of the concerned Court under Protection of Women from Domestic Violence Act (as known in England) and can seek various reliefs:

Right to residence in the last shared household/domestic home in a peaceful and dignified manner.

Right to monetary compensation for daily upkeep,

Right to financial assistance etc.

So as far protection from Peter is concerned, Hannah can approach the concerned civil court and seek Injunction against Peter from approaching her and causing damage to her mind and body.

So far as custody of George is concerned, Hannah is the natural guardian till he attains the age of seven years. She can seek custody even thereafter on the ground that Peter is a drunkard and has been living in a lesbian relation with one Al. Hence peter is not the fit guardian so far as care, protection and welfare of the minor child George is concerned. Hannah can also seek protection of the share of the George in the estate/properties of Peter by

filing a civil suit as his next best friend/guardian. Apart from all the above reliefs, Hannah can also file a suit for maintenance of herself and her minor child against Peter.

On the all above-said grounds, the case of Hannah and Peter can be decided by a competent court of law and all concerned persons can attain a desirable or appropriate remedy that is available under the English law. Though all the above questions are answered on the basis of representation of facts and circumstances, answers and findings may vary depending upon interpretation of the same by English courts. It has been observed that courts have taken a different approach in various cases. Courts have decided various cases in contradiction of traditional cases and instances.

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