



## Part One

# Introduction to the Principles of Marriage

Up until the end of 2005 the only union between two people which was recognised by law was marriage, and this is a union which can be traced back to the early stages of civilisation. Whereas everyone instinctively knew what marriage was, it was not until 1866 that it was specifically defined by case law, in Hyde –v- Hyde (1866) LR 1 PD 130 as:

The voluntary union for life of one man and one woman to the exclusion of all others.

However, this definition no longer stands. In 2005, a new union between two people became law. This was a union not between a man and a woman, but between either a man and another man, or a woman and another woman. This new union is called a “partnership”, but more particularly a “civil partnership” (CP) and was introduced by the Civil Partnership Act 2004 (CPA). Such unions gave same sex couples the same rights and responsibilities as a married couple, but otherwise the two statuses are not interrelated, i.e. only same sex couples can enter into a civil partnership – it was not open to heterosexuals. Although civil partnerships were originally available only to same-sex couples, the Supreme Court has found that it is discriminatory to exclude heterosexual couples and so as of December 2019, civil partnerships are also available to all couples. Whereas, formerly, a civil partnership could not take place in a church or be incorporated into any form of religious ceremony, the

# FAMILY LAW

Equality Act 2010 amended this to provide that a CP may now take place on religious premises.

It must be recognised that a civil partnership is not a marriage, nor can it be called a marriage, but the position of marriage vis-à-vis same sex couples changed in 2013, when the Marriage (Same Sex Couples) Act came into force. This Act provided (inter alia) that as from March 2014, same sex marriages were legal and could take place. The Marriage (Same Sex Couples) Act (Commencement No. 2 and Transitional Provision Order) 2014 then brought into force the majority of the provisions which allow same sex couples to marry from 13 March 2014.

The Act does not redefine marriage but, obviously, the definition in Hyde -v- Hyde is no longer relevant, and so one can only assume that the current definition would be:

The voluntary union for life of two people to the exclusion of all others.

Civil partners (under a civil partnership) are able, pursuant to s. 9(6) of the Marriage (Same Sex Couples) Act 2013, to convert their civil partnership into a marriage (if they so desire – it is not compulsory), and married persons (either homosexual or heterosexual) can also change their legal gender whilst remaining married. As the law stands, it must be understood that marriage or civil partnerships can only be made between two people – they cannot be made between three or more people.

The Government, in proposing this change to the law and definition of marriage, has itself not sought complete equivalence between same sex couples and heterosexual couples. For example, for same sex marriages there is no requirement that the marriage must be consummated, and there is no presumption as to the parenthood of any children. In addition to these differences, civil partnerships will be an option for same sex couples and heterosexual couples.

The question regarding the conducting of a same sex marriage in church has caused a lot of controversy. The position is that a decision to carry out the ceremonies will be made by the individual religion or religious denomination.

Other provisions have been introduced in order to embrace the fact that modern society has become much more multifaceted. For example, the protection against forced marriages, which was first introduced in the Family Law Act 1996, has been further strengthened by making the breach of a Forced Marriage Protection Order a criminal offence.



## Part Five Child or Children Orders

It is not generally possible to make arrangements for child maintenance through the court, except where one of the parents lives abroad. Child maintenance is financial support towards a child's everyday living costs and upkeep when parents are separated.

### Child Maintenance

The parties can arrange child maintenance themselves if they can agree, and it is always best policy for them to try and come to some agreement. If they do, this is called a “family-based arrangement”.

A family-based arrangement is a private way to sort out child maintenance. Parents arrange everything themselves and no one else has to be involved.

However, if the parties cannot agree to a family-based arrangement, then the matter has to be dealt with through the Child Maintenance Service (CMS) which has superseded the Child Support Agency (CSA).

However, the court can make other financial arrangements in relation to children, i.e. lump sum payment orders, property disposition, adjustment or settlement orders when they deal with financial orders following (or in conjunction with) a divorce or dissolution of a CP (explored earlier in this course).

## Public and Private Children Law

There are two aspects of the law relating to children: Private Children Law and Public Children Law. The latter is beyond the scope of this course as it deals, primarily, with the safeguarding of children outside the sphere of a family environment, e.g. children who are placed in Local Authority care for reasons of the child's safety or neglect, abuse, abduction or emergency. Proceedings in relation to these matters are in the hands of the Local Authority or the local Child Protection Agency.

Private Children Law is very relevant, however, to what happens when a marriage or CP breaks up and there are children of the family.

In 1989, the Children Act of that year was passed which (as amended) reformed the whole area of law relating to children, including the provision for Local Authority services for children in need, dealing with children's homes, foster caring, child minding, day care, adoption. It also provided for the settlement of disputes between parent and parent, and parent and child.

s.105 of the Act defined a child as a person under the age of 18. The Act set out two primary principles which have to be followed in all circumstances. The first, s.1(1) of the Act, provides that when determining any question relating to the upbringing or property and income of a child, the child's welfare shall be the court's paramount consideration. The second, s. 1 of the Act, provides that when a court is deciding whether to make an order under the Act, it shall not make any order unless it considers that doing so would be better for the child than making no order at all. This means that orders should not be made merely for the sake of it.

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## Coursework Sample

### Assessment 1a

#### Type a Client's Statement

Please type Margaret Henderson's statement concerning her matrimonial affairs.

This should be typed using 11pt. Times New Roman font, standard margins (2.5cm) and 1.5 line spacing. Head it "STATEMENT OF MRS MARGARET HENDERSON" (bold, capital letters and underlined). The following is the dictation:

MARGARET HENDERSON (capital letters) of 34 Acacia Drive, Lower Vale, Chester, Cheshire, CH7 3SL, states: - new paragraph - I am 40 years of age, having been born on 19 February 19XX. My telephone number at home is 07542 351862, and my email address is margarethen@gmail.com. I am married to JOHN RANDLE HENDERSON (capital letters), who currently lives at 15 Carneby Road, Winchester, Wessex, SO21 5TL. His telephone number is 07921 452092, and his email address is j.henderson@hotmail.com. He is 45 years old, and his date of birth is 13 August 19XX. He currently rents the place where he is living as he has moved out of our home. - new paragraph - I met my husband when I was 18 and we were engaged for about two years before we were married. Our wedding took place on 18 August 20XX at the Parish Church of St. Mark, Upper Vale, Chester. My maiden name was SHEPHERD (capital letters). - new paragraph - We have two children: - new paragraph - MICHAEL JOHN (capital letters) was born on 26 May 20XX. He is a happy and healthy boy. He attends Upper Vale High School in Chester and is doing well. - new paragraph - Our daughter, SANDRA LOUISE (capital letters), was born on 14 December 20XX. She goes to Upper Vale Primary School, which is part of the same school that Michael goes to. She is a very happy child too and gets on well with her brother. Both children are ours; John, my husband, is the father of them both. Neither of us have any other children. - new paragraph - Our marriage used to be a happy one, but sadly it started to deteriorate about two years ago when we were having a lot of arguments. It has gotten to the point where it has completely broken down and there is no chance of us getting back together. - new paragraph - My husband works as an Accountant for a large firm in Winchester. I work in the Marketing Department of a clothing store, as an Assistant. John earns about £50,000 per annum (gross), which is paid monthly. He also has benefits such as a company car and has life insurance. I earn £35,000 per annum (gross), which is paid monthly. - new paragraph - Our house is worth about £390,000. We bought it in 20XX for £220,000 with a 20% deposit of £44,000 and a mortgage of £176,000. After our marriage, our salaries were paid into our joint bank account out of which we paid for all the outgoings, household expenses and holidays, etc. - new paragraph - I want to keep the house now that John has moved out. We will be sharing custody of the children, but they will be mainly living with me. I would like him to pay maintenance for them.

(Date it with Monday 22 September 20XX and then add "Signed" underneath with a row of dots following it.)

**This subject includes six practical assessments in total, which help learners to develop essential Legal Secretary skills. Learners are provided with full instructions on how to complete each assessment, and information is included within the assessment criteria to support successful completion.**

**A multiple-choice achievement test is also included to assess overall knowledge and understanding.**