

English for Lawyers 3


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Session 8, 4 Dec 2018

Contract law



Revision


Contract law

1. What is a contract?
 2. What are the necessary elements of a contract?
 3. What is a counter-offer? Can it make part of a contract?
 4. Does acceptance need to be communicated?
 5. What is consideration?
 6. What types of terms can a contract have?
 7. Explain the terms: indemnity, assignment, and governing law.
 8. How can a contract be discharged?
 9. What possible remedies for a breach of contract are there?
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Family law




Family law

- ▶ What is a family? How can we define it? What should be taken into consideration when defining a family?
 - ▶ What do you think about marriage? Is it an outdated institution?
 - ▶ What are the reasons why people get married?
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Family law


- ▶ **FAMILY LAW** concerns matters such as:
 - marriage, civil unions and domestic partnerships,
 - adoption and surrogacy
 - domestic violence
 - child abduction
- ▶ usually concerns parties related by blood or marriage, but can also affect those in a more distant or casual relationship

Family law


- ▶ FAMILY – hard and dangerous to define
 - ▶ a primary group whose members assume certain obligations towards each other and generally share common residences (Barker, 2003)
 - ▶ *Think of as many possible types of families as you can even if you can't think of a name for them!*
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Family law


▶ TYPES OF FAMILY STRUCTURES

- nuclear families
 - single-parent families
 - avuncular families
 - cross-generational families (extended families)
 - adoptive/foster families
 - blended families
 - unmarried families
 - grandparental families
 - same-sex families
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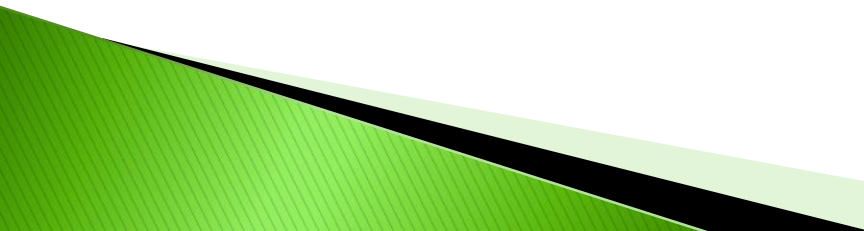
Marriage

- ▶ in English law, marriage is defined as ‘the voluntary union for life of one man and one woman to the exclusion of all others (Hyde v Hyde, 1866)’ (Lord Penzance)
 - ▶ What does this definition say about the essence of marriage? What kind of marriages should be void, according to this definition?
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Marriage

- ▶ ‘...the **voluntary** union for life of one man and one woman to the exclusion of all others’
 - ▶ genuine consent of the partners necessary
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Marriage

- ▶ ‘...the voluntary **union for life** of one man and one woman to the exclusion of all others’
 - ▶ What about divorce? Divorce already legal at the time
 - ▶ CA: at the initiation of the marriage, the intention of the parties must be union for life
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Marriage

- ▶ ‘...the voluntary union for life **of one man and one woman** to the exclusion of all others’
- ▶ excludes same-sex marriages


Marriage

- ▶ ‘...the voluntary union for life of one man and one woman **to the exclusion of all others**’
 - ▶ prohibits bigamy
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Civil marriage

- ▶ introduced as an alternative to church marriage in England and Wales by the Marriage Act 1836

Common-law marriage

- ▶ a.k.a. informal marriage, consensual marriage
 - ▶ marriage not solemnized in a ceremony
 - ▶ recognized in some jurisdictions
 - ▶ requires cohabitation and mutual and publicly expressed intention to act as spouses
 - ▶ recognized in some common-law jurisdictions (NOT England!)
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Marriage under English law

- ▶ MARRIAGE – a contract between two persons
- ▶ imposes rights and obligations (such as rights to visit the spouse in hospital/prison, responsibility for their debts, control over their affairs when they are incapacitated, **community property**, etc.)
- ▶ free and voluntary consent of the parties essential

Capacity to marry

- ▶ an English or Welsh resident wishing to marry must NOT be:
 - under 16 years old
 - already married (**affinity**)
 - certified of unsound mind
 - within the 'prohibited degrees' of **consanguinity** (a close blood relation)

Capacity to marry

- ▶ a person of 18 or above can marry independently
 - ▶ a person between 16 and 18 needs the consent of a parent
 - ▶ if parent unavailable, they may get it from the court
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Marriage under English law


- ▶ a marriage can be solemnized either:
 - according to the rites of the Church of England
 - under a certificate of a Superintendent Registrar
- ▶ the certificate valid for marriages in a register office, the Church of England, and other buildings registered for that purpose

End of marriage

- ▶ A marriage can end by:
 - divorce
 - annulment (void and voidable marriages)
 - death of a spouse

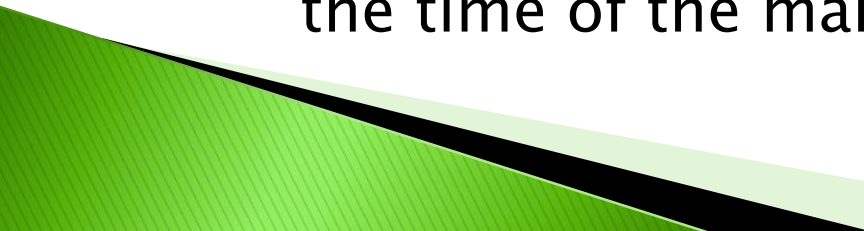
Void marriages

A marriage will be declared null and void *ab initio* by the court in the following cases:


1. the parties are within the 'prohibited degrees'
 2. either party is under 16
 3. procedure was not followed (e.g. marriage took place in an unregistered place)
 4. either party is already legally married
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Voidable marriages

A marriage valid until declared void by the court in the following cases:

1. marriage not consummated because of incapacity of either party or either party willfully refuses to consummate the marriage
 2. the consent was invalid (e.g. duress, mistake, unsound mind)
 3. the respondent was suffering from a sexually transmitted disease at the time of the marriage undisclosed to the spouse
 4. the respondent was pregnant by another man at the time of the marriage
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Civil partnership (UK)

- ▶ Civil Partnership Act 2004
 - ▶ a legal relationship between two people of the same sex
 - ▶ can end in death, dissolution or annulment
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Civil partnership (UK)

- ▶ bars to civil partnership:
 - the partners are not of the same sex
 - either of them is a civil partner or is already married
 - either is under the age of 16
 - they are within the 'prohibited degrees' of consanguinity

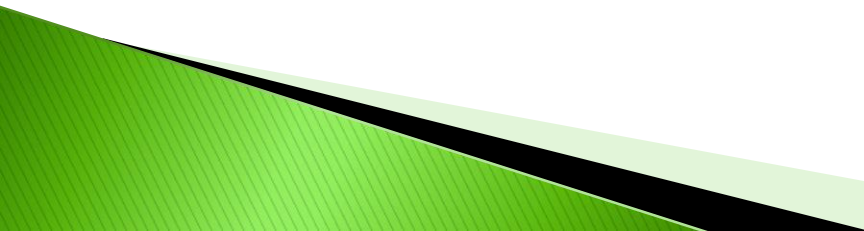
Same-sex marriage (UK)

- ▶ Marriage (Same Sex Couples) Act – entered into force in April 2014
 - ▶ Civil partnerships formed before the law entered into force **can** convert to marriage
 - ▶ Parliament for a long time reluctant to give civil partnerships the name ‘marriage’ but finally succumbed
 - ▶ Public polls increasingly in favour of equal marriage rights
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Same-sex marriages (USA)

- ▶ Made legal on the federal level by a US Supreme Court ruling in Obergefell v. Hodges
 - ▶ The USSC found the ban on same-sex marriage to be unconstitutional
 - ▶ response to initiatives in some states to restrict marriage to heterosexual unions
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Same-sex marriages (USA)

- ▶ Defense of Marriage Act (DOMA) 1996
 - ▶ Section 2 removes the obligation of reciprocal recognition of marriage between states
 - ▶ Section 3 defines marriage as a union between a man and a woman
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Same-sex marriages (USA)

- ▶ Since 2010 challenged before federal courts – contrary to equal protection under the law and protection against unfair treatment
 - ▶ Section 3 found to be unconstitutional by several federal courts and finally by the US Supreme Court
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Divorce

- ▶ What are the consequences of divorce?
 - ▶ Should the law make divorce easy or difficult?
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Divorce

- ▶ until 1969, divorce law based on the doctrine of matrimonial offence
 - ▶ the 'guilty party' and the 'innocent party'
 - ▶ the innocent party could ask for a divorce based on the grounds of wrongful conduct of the other party – adultery, cruelty or desertion
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Divorce


Family Law Act 1996 (Section 1)

- i. The institution of marriage is to be supported;
- ii. The parties to a marriage which may have broken down are encouraged to take steps to save the marriage;
- iii. A marriage which has **irretrievably broken down** should be brought to an end with minimum distress to the parties and any children, in a manner to promote a good continuing relationship and to stop unreasonable costs from the process. Any risk from domestic violence to one of the parties should be removed or diminished.

Divorce

- ▶ Parties to a divorce proceeding:
 - **petitioner** (the spouse petitioning for divorce)
 - **respondent** (the other spouse)
- ▶ the court asked to issue a divorce order

Divorce

- ▶ the petitioner must prove that the marriage has 'irretrievably broken down' for one of the following reasons:
 1. adultery
 2. unreasonable behaviour
 3. desertion (for 2 years)
 4. living apart for 2 years (consent of respondent necessary)
 5. living apart for 5 years
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Divorce


- ▶ a divorce petition cannot be presented within the first year of marriage

Divorce


UNCONTESTED DIVORCE

- ▶ a divorce where the respondent agrees that the divorce should go through


Procedure

- ▶ **Filing a divorce petition**
 - ▶ Must include the spouses' details and the marriage certificate
 - ▶ Reasons must be stated
 - ▶ Court fees payable in the amount of £410
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Procedure

- ▶ Respondent must within 8 days acknowledge the receipt of the petition
 - ▶ Failing to respond treated as agreement
 - ▶ In the response the respondent can:
 - agree with the divorce,
 - defend the divorce (initiates court proceedings), or
 - file his/her own divorce petition (if they can state grounds such as adultery or unreasonable behaviour)
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Procedure

- ▶ Petitioner applies for a **decree nisi**
 - ▶ DECREE NISI – a provisional document stating that the court sees no reason why the divorce should not go through
 - ▶ It does NOT end the marriage
 - ▶ Marks the beginning of the minimum period of six weeks plus one day before the marriage can be dissolved
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Procedure

- ▶ a decree nisi must be obtained to initiate the **ancillary relief** procedure
 - ▶ This concerns the resolving of financial matters between the spouses
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Procedure

- ▶ Upon the expiry of the period an application for a decree absolute can be filed
- ▶ DECREE ABSOLUTE – dissolves the marriage when it has been satisfied that there are no other reasons why it shouldn't be

Domestic violence

- ▶ any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality

Domestic violence

- ▶ the victim (applicant) can apply for a court order against the abuser (respondent)
 - non-molestation orders
 - order the respondent to stop the abuse
 - occupation orders
 - regulate the right to live in the family residence (dwelling-house); usually ordering the abuser to leave

Thank you for your attention!

