DISSOLUTION OF MARRIAGE AND THE CHOICE OF LAW: MATTERS ARISING

By

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Abstract

Dissolvingmarriage takes different forms and procedures. In Islamic marriage Holy Quran prescribed party to say *"talaq"*(three times), meaning the union has ended. In customary marriage, we have non judicial means of dissolution whereby either party can just park out of the matrimonial house or return the marriage symbol to the in-law. While judicial dissolution is a situation whereby either party approach customary court within their locality to seek judicial separation. These procedures are not the same in Statutory Marriage. Grounds for the divorce as prescribed by matrimonial causes Act 1970,is that before commencing divorce processes either of the party must have breached the ground stated in Section 15(2) of the Matrimonial Causes Act. The marriage must have broken down irretrievably. Also, as contained by the Act, marriage to be dissolved must have reached at least two years period otherwise, proceedings shall not be allowed except where the exceptions are pleaded and proved in court. The circumstances upon which dissolution of marriage is based shall be the focus of this study. How it will not affect the right(s) of the party. Properties jointly acquired shall also be discussed. The paper concludes that while the right of divorce is exercised, it must not bring hardship.

1.0 Introduction

In accordance with the provisions of the Matrimonial Causes Act (the Act), for a marriage under the Act tobe dissolved by the High Court, it must be a statutory marriage evidenced by a Marriage Certificat[1]e. A statutory marriage is one celebrated under the Act and it confers jurisdiction to theCourt to hear the petition for dissolution of marriage[2].

The law that governs matrimonial causes in Nigeria is the Marriage Act, the Matrimonial Causes Act 1970 and the Matrimonial Causes Rules 1983. These laws provide for the rules governing

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[1] As provided by Section 15 of Matrimonial Causes Act (MCA) 1970

[2] As stated by the Court in the case of Hyde v Hyde (1866) IP & D. 130

matrimonial matters, procedures and grounds relating to matrimonial causes. The Act provides that the court with jurisdiction that has authority to hear and determine matrimonial causes is the High Court of any State of the Federation as provided under the Section 2 of the Act. The action for dissolution of marriage is ordinarily instituted by a virtue of Petition filed by the person bringing the action called the Petitioner and the party who it is brought against that is called the Respondent. The Respondent replies to the filed petition by a way of Answer or Cross-Petition.

The law stipulates that a marriage under two (2) years cannot be dissolved; this is called the two-year rule. It is provided for under Section 30 of the Act, which states "subject to this section proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by the leave of court".

Although to every rule there must be an exception. Consequently, in exceptional cases, a marriage under 2 years can be dissolved where the petitioner bringing the action for divorce can prove that exceptional hardship or that the case is one that involves exceptional depravity, which will be caused if the marriage is not dissolved as it is provided for under Section 30 (3) of the Act. The court in determining the application for leave to institute proceedings of dissolution of the marriage under two years will consider the interest of any children of the marriage and question whether there would be any probability of a reconciliation between the parties before the expiration of the period of two years after the date of marriage[3].

At this juncture, it would be trite to state that before the court dissolves any marriage, the court has the duty to consider the possibility of parties reconciling as provided under the Section 11 of the Act. So, before a court in Nigeria dissolves a marital union, it must be satisfied that there is no possibility of parties to reconcile. Sometimes the court may refer the parties to mediation for the sole purpose of possible reconciliation. But where after exploring the possibilities for reconciliation and the parties failed, the court will have no choice but to dissolve the marriage.

There is a popular aphorism that says that; "what God has joined together let no man put asunder". While there is an element of truism to that aphorism, it is submitted that it is the duty of man to put an asunder to what God has not joined together; and there is no better way to do

[3] Exceptional situation where marriage that is not up to statutory mandatory two years period cab ne dissolved. See Section 30(3) of Matrimonial Causes Act 1970

that than to resort to court for legal remedies to put an end to any traumatic marriage and free the parties from the attendant misery and pain they are living with under the guise of marriage.

1.2 Dissolution of marriages contracted under the Matrimonial Causes Act[4].

Generally referred to as court marriage or statutory marriage, marriage under the Act means monogamous marriage; that is a marriage between one man and one woman, excluding all other forms of marriages, like gay marriage, polygamous marriage or marriage contracted under the various native laws and custom of the various tribes in Nigeria. Also, for a marriage to constitute a marriage under the Act, the marriage must have a marriage certificate issued by a government approved marriage registry or a licensed place of worship. The mere fact that a marriage was celebrated in church does not constitute a marriage under the Act, such a marriage must comply with the requirement of the Act to be a statutory marriage. A church marriage without more is a customary marriage and will not enjoy the benefits of a statutory marriage, except the church is licensed to celebrate marriages, this is seen in*Nwangwu vs Ubani*[5].

1.2.0 Reasons for Seeking for a Divorce

There are plethora and avalanche of factors which makes marriages breakdown. Some of these factors will be classified under two headings[6]:

(1) Poverty and (2) Adultery.

With respect to poverty, money is the life wire of every marriage. It brings comfort and stability to marriages. The absence of money makes either of the partners to resort to gambling, excessive

intake of alcohol, drugs and finally crime which will definitely affect and lead to the collapse of the marriage. Bible[7] gives credence to the importance of money and evil effect of poverty to marriages when it states that; "if anyone does not provide for his relative and especially for members of his household, he has denied the faith and is worse than an unbeliever". With respect to Adultery, nothing kills a marriage faster than an adulterous partner; it is cancerous to marriage. A situation where a partner commits incest by sleeping with his or her biological child,

[4] Cap M7 L.L.N 2004
[5] (1997) 10 N.W.L.R (Pt 526). 559
[6] As contained in Section 15 (2) of the Matrimonial Causes Act 1970
[7] The Holy Bible in I Timothy Chapter 5 vs. 8

or the husband impregnating another woman, or having sex with the maid, or the wife having a baby for another man while married or either of the partner having multiple sex partners outside the marriage, will create a deep schism and scar in the marriage which will ultimately lead to divorce.

1.2.1 Grounds for Divorce Under the Act

There are different procedures and forms available to a petitioner who seeks to bring an end to his or her marriage under the Act. They include (a) Dissolution of marriage, (b) Nullity of a voidable marriage (c) Nullity of a void marriage (d) Judicial separation (e) Restitution of conjugal right and (f) Jactitation of marriage. However, the most ubiquities form of petition under the Act, is the petition for decree of dissolution of marriage. It is the most widely litigatedpetition. In fact, out of all the petitions that pour into the registry of the high court, almost 95% of them is for decree of dissolution of marriage, while the remaining 5% is shared among the other forms of petition. It is on this basis that decree for dissolution of marriage would be the focused on in this write-up.Under section 15(1) of the matrimonial causes Act, the sole ground for dissolution of marriage under the Act is that marriage has broken down irretrievably- Ekrebe vs. Ekrebe[8].By this, the Act has created only one ground for divorce but the facts which may lead to a marriage breaking down irretrievably are provided for in section 15(2) (a)-(h) of the Act once the petitioner has satisfied the court of one or more of the following facts:

(a) That the respondent has & willfully and persistently refused to consummate the marriage;

(b) Adultery and intolerable to live with the respondent;

(c) Behave in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(d) That the respondent deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(e) That the parties to the marriage have lived apart for a period of at least 2 years immediately preceding the presentation of the petition and the respondent does not object to a decree been granted;

[8] (1999) 3 N.W.L.R (Pt. 596) 594

(f) Parties have lived apart for a continuous period of at least 3 years immediately preceding the presentation of the petition;

(g) Failure to comply with a decree of dissolution of conjugal right made under the Act;

(h) Presumption of death. The petitioner must prove at least one of the facts contained in Section 15(2) (a)-(h) of the Act before he can succeed. Where the petitioner fails to so prove, the petition for dissolution will be dismissed. The mere fact the petitioner alleges that the respondent is a witch, or is diabolic orthe mere accusation that the respondent is not a good person will not be enough reason to dissolve a marriage.

1.3 Jurisdiction of Court in Divorce Proceeding

Jurisdiction here simply means, the court that has the power to entertain divorce proceedings. Section 2 of the Matrimonial Causes Act states that "a person may institute an action under this Act in the High court of any state of the Federation and the High court of the Federal Capital Territory". Thus, it is the High court of the thirty-six (36) of the Federation and the Federal Capital Territory that has jurisdiction over divorce proceedings. If divorce proceeding is brought before any court aside the high court of a state, the proceeding is nullity ab initio[9]. A simple analogy will suffice here. If Mr. A marries Mrs. A in a marriage registry in Port Harcourt, Rivers State in the year 2010 and in 2015 Mr. A and Mrs. A moved to Lagos after their marriage but later Mrs. A was seduced by one rich politician and Mr. A wants a divorce. Where would Mr. A go toinstitute the proceeding for divorce? The law is that he may go back to Port-Harcourt in Rivers State or he may go and institute the divorce proceeding in Lagos State where he is currently residing or that he can go to any state of the Federations and the proceedings will be competent. However, consider a situation where Mr. A while still residing in Lagos and his wife, Mrs. A is also residing in Lagos decided to take the matter to the High Court of Kano state so that the proceedings will be inconvenient and difficult for Mrs. A, though the proceeding is still valid and competent, but the principles of 'Forum Convenience' will be brought to play in the issue of Jurisdiction so as to ameliorate the issue of Inconvenience and the power of the court to transfer such petition may be invoked. Such power has been given to the Court by Section 9 of the Matrimonial Causes Act. Under that Section, the courts are empowered to transfer

[9] Section 2 of Matrimonial Causes Act makes it mandatory that any divorce proceeding of any statutory marriage in Nigeria must commence at High Court of a State or FCT High Court

Matrimonial Causes to any court in any other state if it is in the interest of Justice that such divorce proceeding be dealt with in that other Court as seen in*AdegoroyevAdegoroye*[10]; *Ani vs. Ani*[11]

1.3.1 For the court to have Jurisdiction for a petition for dissolution of Marriage, the petition must be accompanied by the following documents:

(a) A verifying Affidavit to verify the fact stated in the petition

(b) A notice of the petition in appropriate form i.e. forms 8, 9 or 10

(c) A form of acknowledgement of service by the respondent and;

(d) A copy of the Marriage certificate

It should also be noted that there are instances where the marriage certificate has been lost, destroyed or one of the spouse has refused to give up the marriage certificate as he or she is unwilling to submit to divorce proceedings The proper step under this situation is for the petitioner to apply for the certified true copy (CTC) of the marriage certificate at the appropriate marriage registry.

1.3.2 Reconciliation

The Matrimonial Causes Act and Matrimonial Causes Rules do support settlement and resolution of dispute by encouraging reconciliation among parties. No petition would properly lie in court for consideration without the petitioner or his counsel showing the court that they have made effort to settle the aggrieved parties, but such moves for settlement has yielded no fruitful results. The reason for this is that, an aggrieved petitioner may take a decision in anger and institute a divorce proceeding, and also for the court to stem the ever-increasing rate of divorce in our society, this is seen according to order II, rule 33 Section 34 matrimonial cause rule.

1.3.3 Legislations Regulating Marriages in Nigeria

The principal legislations regulating statutory marriages in Nigeria are:

1. The Marriage Act;

[10] (1996) 4 N.W.L.R Pt. 433 p.712
[11] (2002) 6 N.W.L.R Pt. 762

2. The Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria, 2004;

3. Matrimonial Causes Rules made pursuant to the Matrimonial Causes Act.

The main requirement for Courts to have jurisdiction in relation to matrimonial causes proceedings is domicile in Nigeria. A person who is domiciled in any State of the Federation is considered domiciled in Nigeria and can bring a petition for matrimonial causes reliefs in the High Court of any State of the Federation, irrespective of whether he is resident in that State or not.

Domicile isgenerally defined as the lace at which a person is physically present and regard as home[12]provides that;

a. a deserted wife who was domiciled in Nigeria either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Nigeria;

b. a wife who is resident in Nigeria at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Nigeria at that date.

1.3.4 Recognition of Marriages Contracted Outside Nigeria

Ordinarily, Nigerian Courts recognise statutory marriages contracted in Nigeria. However, it provides the conditions in which Nigerian courts will recognise a foreign statutory marriage thus[13]:

"Subject to sections 50 to 53 of this Act, a marriage between parties one of whom is a citizen of Nigeria, if it is contracted in a country outside Nigeria before a marriage officer in his office, shall be valid in law as if it had been contracted in Nigeria before a registrar in the registrar office."

The conditions stipu1ate in[14]are that for such marriage to be recognised and valid under Nigerian law with a marriage must have been contracted before a Nigerian Diplomat or Consular office of the rank of Secretary or above, at his office. The office used by a marriage officer for the

[12] Section 7 of the Matrimonial Causes Act ("the Act")
[13] Section 49 of the Act
[14]Section 50 to 53 of the Act

performance of his diplomatic or consular duties shall be regarded as the marriage officer's office for the purposes of the Act. The Act shall apply in relation to a marriage contracted before a marriage officer as nearly as may be contracted before a marriage registrar in Nigeria.

In the same vein, since Nigeria is a common law country, common law rules on recognition of foreign marriages on the basis of the law of the place where the marriage was celebrated (loci celebrations) applies. This is given credence by the Act[15].The Section provides that a marriage will be declared void if it is not a valid marriage under the law of the place where the marriage was celebrated, by reason of failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages. Therefore, marriages which are validly contracted in the place of celebration will be recognised in Nigeria and shall confer jurisdiction on Nigerian Courts.

Also, the Act[16] provides for evidence of marriage thus;

> Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy thereof purporting to be signed and certified as a true copy by the registrar of such district for the time being, and every entry in a marriage register book, or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court ofjustice or before any person having by law or consent ofparties authority to hear, receive, and examine evidence.

Consequently, upon presentation of a certificate of marriage duly certified by the registrar of a foreign district, such certificate shall be admissible as evidence of the marriage by Nigerian courts.

1.4 Dissolution of Marriage Under Customary Law

The customary law marriage however is a bilateral contract between the husband and his family on the one hand, and the wife and her family on the other hand. Generally, either the husband or

[15] Section 3(1) (c) of the Act
[16] Section 32 of the Act

the wife may initiate divorce action. The unilateral act of one party, and especially of the wife, cannot bring about a divorce. The families of the two spouses participate in divorce proceedings as they did in contracting the marriage The family of the wife can also initiate the termination of their daughter's marriage In such a situation they would have obtained the consent of their daughter They initiate the divorce by withdrawing her from her husband's home and refunding the marriage symbol[17]. However, if she withholds her consent by refusing to leave her matrimonial home, their refund of the marriage symbol will have no effect whatever on the marriage[18]. Members of the husband's family lack the right to directly initiate their son's divorce[19], but can indirectly induce their son to start divorce action against his wife[20].

With particular reference to Okirika Division in the Rivers States under the system of marriage known as *Iya* a husband can take steps to divorce his wife but the wife is not permitted by the local customary. Wife cannot initiate the process unless her husband consents to her doing so If he refuses to give his consent, the marriage will continue to subsist If the wifeleaves him subsequently, then any child she bears for another man is regarded as belonging to her husband. In the case of *Solomon v Gbobo*[21], the wife's father sought an order to compel his daughter's estranged husband to consent to the divorce she sought to initiate.

2.0 Procedures for Dissolving Customary Law Marriage

Customary law does not prescribe any length of time a party must be married before initiating a divorce action. A divorce can take place at any time after the celebration of a marriage. This is in contradistinction to an Act marriage where divorce action must start at any time after two years of the marriage, except where obtaining a divorce decree will offset exceptional hardship on the

[17] S.N.C. Obi The Ibo Law of Property (London, Butterworth & Co 1966) p 364, that "A wife can leave her husband at will, and would be removed by her relatives from a husband who had consistently ill-treated her"; also *Lawal v. Lawal,* (unreported) Customary Court Ake-Abeokuta, reported in *Lagos Weekend*, 7 July, 1989, where both the husband-petitioner and the wife-respondent testified that "her father advised her to find another man…", she left her husband and found herself another man for whom she became pregnant prior to the petition.

[18] S.N.C. Obi; *The Manual Customary Laws obtained in Anambra and Imo States (*Enugu, Government Printer, 1977*),* at p. 299.

[19] Ibid at p. 290

[20] F. Bassey v. E. Isich (1972) Suit No. 43/72 (unreported) Eket Customary Court

[21] (1975)E.C.S.N.L.R. 457

part of the petitioner[22]. Divorce of customary law marriage may be obtained either by the judicial or the extra-judicial mode.

2.1 Extra-judicial Mode

Many people look on customary law marriage as easily dissolved is consequent upon this mode of divorce. This traditional mode does not require any formalitiesas it is the case under the Marriage Act. An Act marriage can only be dissolved by a court of law which has jurisdiction under the M.C.A l970[23], and never extra-judicially. A man may initiate termination of his marriage by conducting himself in any of the following ways:

(a) throwing out one or more of his wife's cooking utensils or other personal effects, so that the wife packs them up and returns to her maiden home[24];

(b) getting his wife to follow him to her maiden home, carrying a pot of palm-wine he has purchased, and on reaching there telling her father or guardian: "This is your daughter whom you gave me in marriage, now take her back please";[25]

(c) quitting the matrimonial home and telling his wife that he is through with their marriage. This is a modern mode in Nigerian society and occurs mostly in the circle of less privileged men who have married women of affluence, who themselves either own the house used as the matrimonial home or have been financially responsible for their husbands. This class of men is inclined to quit the matrimonial home once their wives have set them up financially.

Exemplified this system of divorce further by saying, Jordan:

A man divorced his wife by simply ordering her out of the compound. There was no other technicality about it, though he generally added a wealth of symbolism of flying her cooking pots after her. The fact that he had this extra-ordinary power served more than anything else to keep

[22] S.30 M.C.A. 1970
[23] S.27 of the Marriage Act, CAP. 218, Laws of the federation of Nigeria, 1990.
[24] Ibid
[25] See *Okpanum v. Okpanum*(1972) 2E.C.S.NB.L. 581, AT P. 565, where Agbokoba J. stated; "it is sufficient to arrange a meeting where he duly informs his parent-in-law of his intention to bring the marriage to an end"; see *The Customary Law Manual.*

women in subjection. In practice, it did not occur without very serious reasons, because it caused endless complications[26].

A wife who desires to dissolve her customary marriage can, on the other hand, initiate the process herself in any of the following ways:

(a) taking all her personal effects and quitting their matrimonial home, informing her husband that she is through with the marriage;

(b) indulging in promiscuity while still in the husband's house;

(c) going through the preliminaries of a subsequent customary marriage with a view to refunding the husband the marriage symbol he had given, from the symbol that the prospective husband would give on her marriage.[27]'

The mere fact that a spouse has left the matrimonial home will not be construed as a termination of their marriage.[28]' Nor will mere bluffing or quarrelsome statements suffice.[29]' A desire to terminate the marital union must be accompanied by an overt act which is referable to a clear intention to dissolve the marriage or by an express declaration to the other party.

Consequent upon any initiation of the divorce process by either party, the joint council of the spouses' families is conventionally obliged to attempt to reconcile them. Should they fail in their attempts to reconcile the spouses, the marriage will then be regarded as terminated *defacto*, and the joint council will so declare[30]. The above clarification which may give the impression that customary law marriage is dissolved with relative ease, was further implied, in the evidence of a Lagos Chief in *re Sapara*[31]who, taking off his hat, held it out and testified that 'a woman is like this hat, if one man drops it, another man pick it up.[32]" But the court in this case frowned on this evidence and declared: "Native marriage is not a capital knot which is loosely tied and can be untied...at will.[33]"

[26] S.N.C. Obi (ibid)
[27] See *Solomon v Gbobo*(1974)E.C.S.N.L.R. 457; *Edet v. Essien,* (1932)11 N.L.R. 47.
[28] *Chawere v. Hannah and Johnson* (1935). (supra)
[29] *Okpanum v Okpanum*(1972) 2 E.C.S.N.L.R. 561 at p. 565
[30] *Solomon v Gbodo* (supra)
[31] (1911) Rend. 603.
[32] Ibid.
[33] Ibid.

It is submitted that each of these two views put forward by the court and the Lagos Chief has an element of truth regarding customary law marriage. Many processes of customary law marriage has shown that it is "not a capital knot which is loosely tied", it is however clear that customary law marriage "can be untied...at will". This is because, in the absence of any legislation to the contrary, the only impediment to a complete severance of a marital union is the prolonged efforts of the council of elders of the two families concerned in the divorce. Further, as implied by the Lagos Chief, a woman who has been "dropped" by her husband through divorce, is likely to be picked up for marriage byanother man.

2.2 Judicial Mode

In this situation, "A man can...divorce his wife by bringing her before the courts and giving sufficient reasons. A woman cannot divorce herself but shecan bring her husband before the courts and obtain release from ham ifthe courts decide his guilt[34]". Whereas in the extra-judicial mode dissolution of the marriage can be initiated by a third party i.e. the wife's maiden family in connection with their daughter, in the judicial mode either spouse can bring an action, with or without her family Judicial action is almost always brought when agreement cannot be reached extra-judicially over the quantum of the marriage symbol to be refunded to the husband, or where the husband has refused to accept the marriage symbol and so the wife is not free to remarry[35], or where the wife has refused to leave the matrimonial home after the husband has sought to terminatethe marriage. Thus, in effect, in some cases of customary divorce, the judicial mode is resorted to in order to obtain the *dejure* divorce after a partial performance of the extra-judicial mode[36].

In the first instance, the wife alone or with her maiden family may initiate action in court in the hope that the court will decide that the quantum refundable is no more than the maximum stipulated by the law[37]. In the other instances, the husband initiates legal action. It is usual for the courts to attempt reconciliation between the spouses. Failing this, and without any local legislation which gives the courts the discretionary power to refuse granting a divorce, it

[34] J.C. Cotton; *The Calabar Marriage Law and Custom.* (London, Sweet & Maxwell, 1905)
[35] See *Solomon v Gbodo* (1974) Supra.
[36] See S.N.C. Obi; *Modern Family Law in Southern Nigeria* **(London, Sweet & Maxwell 1963)** *p. 136.*
[37] See Laws of Eastern Region of Nigeria, 1963. Cap. 76.

proceeds to settle the issues which are the crux of the case, after declaring the marriage dissolved. The courts may on occasion however, refuse to grant divorce of a customary marriage if the interests of the children of the marriage will be jeopardised. Declaring that: "the issue of the children is very important", the court in *F. Bassey v E. Isich*[38]' ordered the couple to continueto live together as man and wife for another year to allow the wife to show signs of improvement in her behaviour.

In this case the husband had applied for divorce by reason of his wife's adultery, cruelty and disrespect for his mother. The wife objected to divorce on the grounds that she could not care for the children on her own. With due respect, this decision appears a bit strange as the custodial right over children of customary marriage is in their father. The failure of the law report to state whether or not the husband had objected to taking custody of the children or, if the matter was ever raised in court, leaves the only deduction that the spouses were both still interested in continuing to live with each other, if only for the sake of their children. Otherwise, a party who is keen on obtaining a divorce will have recourse to the extra-judicial mode if such is denied by the judicial mode.

As earlier mentioned, by the extra-judicial mode, divorce is obtained in two stages, the first leading to *de facto* and the second to *de jure* divorce. The former is obtained by the families' council pronouncing the marriage dissolved after failing to reconcile the parties. The *dejure* divorce is effected on the refund of the marriage symbol to the husband This does not apply in the judicial mode for then divorce iseffected in a single stage that is, by the courts pronouncing the marriage dissolved, irrespective of when the marriage symbol is refunded.

2.3 Grounds for Divorce Under Customary Law Marriage

There is no legislation which stipulates the "grounds" in the real sense of this word, for divorce. There are however, certain reasons or circumstances which entitle a spouse to dissolve a marriage. It follows therefore, that where none of such reasons or circumstances exists, the council of elders of the two families will press the parties to continue to live together as husband and wife. In some cases, such pressure has proved ineffective as the party who is keen on the divorce adopts one or more of the measures mentioned above, thus bringing the council to

[38] (1972) Suit no. 43/72. (Unreported). Eket C.C.

acknowledge and pronounce that the marriage has broken down. The reasons or circumstances may now be stated as follows:

2.3.0 Adultery — when committed by the man, this is not generally a reason for the dissolution of the marriage since the man is entitled to have other wives. If a wife alleges that her husband has committed adultery the husband can claim, subject to the woman in question being single, that he intends to many her. Thus, a man is entitled to be unfaithful to his wife if and when he pleases. But the same customary law which makes it unreasonable for the wife to complain about her husband's adultery will entitle him to secure divorce of his marriage if his wife commits adultery. Thus, in *Loye v Loye*[39], the husband's allegation of his wife's first pregnancy by another man secured their divorce. This is in contrast to the situation in an Act marriage where adultery by either spouse is a reason for the other to petition for divorce on the ground that the marriage has irretrievably broken down. The High Court will then grant a decree of divorce if the aggrieved spouse shows that he or she finds it intolerable to live with the respondent.

The explanation given for the unequal treatment of the spouses of customary law marriage is that adultery by a woman is an indication that she cannot make a good mother to her daughters as far as morals are concerned[40]. This argument raises the question whether the adultery of the husband is not an indication that he is morally unfit to raise his own Son? The position under customary marriage law therefore calls for statutory reforms in consonance with the position in an Act marriage; that is to say, either that any extra-marital relations should be grounds for divorce so that a customary law wife could divorce her husband for his adultery or, that adultery by either party to the Act marriage should not constitute a "fact"ground for divorce, especially so in the case of a wife whose adultery did not result in pregnancy. It is submitted that a wife can summarily divorce her husband if he commits adultery with a member of her family who falls within the prohibited degrees of marriage. Thus, in *Tikarewa v. Tikarewa*[41], the wife petitioner sought a divorce of her customary law husband on the ground that her husband attempted to rape her daughter from her late husband. Dissolving the marriage, the Judge said, "the respondent was a disgrace to all stepfathers". The customary law wife will also be entitled to divorce her husband if as a result of adultery, he contracts a dangerous or incurable disease.

[39] (1981) O.Y.S.H.C.L.R., 140; *Augustus v. Augustus,* Customary Court, Shomolu, *Lagos Weekend,* 19/5/89.
[40] S.N.C Obi; (Ibid)
[41] (1970) 2 ALL N.L.R 121

2.3.1 Cruelty- this will entitle either of the spouses to secure divorce. Thus, in *Adeyemi v Adeyemi*[42] a husband obtained divorce after proof of cruelty of the wife which the court described "stranger than fiction". And a suicide note written by a party to the marriage which contains an insinuation that in the event of the death of the writer the other party should be held responsible, entitled that other party to a divorce pronouncement[43].

2.3.2 Sterility of either spouse or impotence of the man — the rationale here is that the main object of marriage is the procreation of children[44], and that this element excludes that object. The importance of procreation in marriage for a Nigerian couple is not limited to cases of customary marriages. In *Abioye v. Abioy*e[45], the court dissolved theparties' three-year-old marriage after wife/petitioner proved that the husband respondent was impotent and she could not bear it.

2.3.3 Desertion — this entitles either party to obtain a divorce. The court has no power to compel a deserting party to return to the other because "an attempt to do so will be an infringement of that spouse's rights under the Constitution of this country[46]". Where there is a record of desertion in marriage, it is going to be a sufficient ground for divorce and the court can premise or base its decision on that and order divorce.

2.3.4 Addiction to crime — such as theft, or gangsterism (i.e. armedrobbery as it is commonly known in Nigeria today)[47]. This rationale lies in the belief in reincarnation and that a criminal tendency runs in the blood. The fear of giving birth to children who will turn out to be thieves or armed robbers suffices to make addiction to crime a reason for divorce.

2.3.5 Lack of respect — A customary law husband can divorce his wife on the reason of her lack of respect for him and members of his family. The present research did not discover any corresponding evidence or authority on a customary law divorce based on the wife's allegation of her husband's lack of respect for her and her maiden family. The above reasons and circumstances are not stipulated by any legislation. They are strictly customary laws marriage.

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[42] (1969) 2 All N.L.R. 161.
[43] *Oluwasegun v. Oluwasegun.* Lagos Customary Court, *Lagos Weekend,* 16/6/89. P. 16.
[44] P. A. Talbot; *Life in Southern Nigeria* (London, Buttermorth& Co., 1964/0, p. 211
[45] Customary Court, Itire-Lagos, reported by *Lagos Weekend* Newspaper, 19/5/89.
[46] *Egri v. Uperi* (1974) E.C.S.L.R. 632 at 634; *Olubayo v. Olubayo,* Mushin-Lagos Customary Court, reported by LagosWeekend, 7/7/82. p.16
[47] See C.K.Meek (Ibid)

Some States in Nigeria have however specifically stipulated by bye-laws, matters which may entitle a spouse to obtain divorce of customary marriage. The Bye-Laws of Lagos and the Western States (of Delta, Edo, Lagos, Ogun, Ondo, Osun and Oyo)[48] expressly specify the following matters, which shall be taken into consideration by the Customary Courts when making an order for the dissolution of a customary marriage:

(a) betrothal under marriageable age;

(b) refusal by either party to consummate the marriage;

(c) harmful diseases of a permanent nature which may impair the fertility of a woman or the fertility of a man;

(d) impotence of the husband or sterility of the woman;

(e) ill-treatment, cruelty or neglect of either party by the other;

(1) conviction of either party for a crime involving a sentence to imprisonment of five years or more;

(g) venereal diseases contracted by either party;

(h) lunacy of either party for three years or more;

(I) adultery;

(j) leprosy contracted by either party; and

(k) desertion for a period of two years or more.

This legislative amendment therefore leaves no room for any other indigenous reason for the dissolution of a customary law marriage in these Western States. In *Adigun v Adigun*[49], the court, in compliance with these statutory provisions, dissolved the twenty-year-old marriage at the suit of the wife, on the ground of the husband-respondent's recently developed and proven insanity.

[48] The Marriage Divorce and Custody of Children Adoptive Bye Law Order, 1958, W.R.N.L. 456 OF 1958
[49] Customary Court, Agosasa-Ogun State reported by *Lagos Weekend*, 14/4/89, p. 16

2.3.6 Issues Arising Subsequently to *defacto* Divorce

Once the party seeking the divorce satisfied the council of elders of the two families or the court as to the reason for the divorce, and attempts to reconcile him or her with the other spouse had failed, *de facto* divorce is pronounced by the council, or *dejure* divorce by the court. Subsequently, matters incidental to such *de facto* or *de jure* divorce arise. They include the quantum of the marriage symbol refundable to the husband, the custody of their children and the distribution, if any, of any properties owned by the parties.

2.3.7 Refund of "Marriage symbol"

This is a significant feature of divorce of customary marriage, in that its effects the *dejure* termination in cases where the divorce was obtained extra-judicially, and by the judicial mode, an application for it to be made implies that the marriage has broken down. Further, just as the right to demand the refund does not arise until there has been a *de facto* divorce[50], so the *dejure* divorce is effected when there has been a refund of the marriage symbol[51], In delivering the judgement of the court in *Okpanum v Okpanum*[52]Agbakoba J. distinguished between those instances where the marriage symbol is immediately refundable - as where the parents of the woman terminated the marriage; and those instances where the refund is delayed until a re-marriage of the woman is arranged — as where the man initiated the divorce process. The learned judge then declared: "Where dowry is not refunded (immediately) the marriage is nevertheless terminated although certain incidents of the marriage are not terminated until the dowry is refunded.[53]" Similarly, Obi, one of the leading authors in Customary law wrote: "she is not divorced until the bride price has been repaid or the marriage otherwise judicially disso1ved[54]. A true statement of the customary marriage law, as far as extra-judicial mode is concerned is that stated in *The Customary Law Manual*[55] as follows:

[50]*Nwanko v. Anor v. Uba (1974)* Appeal No. HO/1A/74, Okigwe H.C. (unreported)
[51] See E.I. Nwogugu;*Family Law in Nigeria, Ikeja, Heinemann Educational book* 1990)
[52] (1972) 2 E.S.C.N.L.R., 561.
[53] Ibid.
[54]S.N.C. Obi
[55]Ibid

> It is not enough to dissolve a marriage if…the families of a husband and a wife determine the amount of bride price…and pronounce the marriage dissolved unless and until the amount so determined has been refunded.

As stated above, the refund of the marriage symbol becomes refundable after the families' council or the court has pronounced the marriage as broken down or dissolved respectively.

(e) Valima

Dinner or *Valima* is highly recommended on the groom. The relatives,neighbours and friends must be invited for *Valima*. However, lavish spending is notadvisable especially when the same money can be used effectively by the couple.

3.0 Dissolution of Islamic Law Marriage in Nigeria

Marriage based on Islamic law is dissolved either by the death of the husband or wife, or by divorce. After the death of a wife, the husband may remarry immediately. But the widow cannot remarry before a certain specified period called *idda*[56]expires. *Iddat* is imposed for two reasons: first, from a sense of respect and propriety; second, for the certainty of paternity. There is no *iddat* for the husband, for neither of the two reasons exists in his case, and in particular the sense of modesty attaches especially to women. If the dissolution of the Islamic law marriage is by divorce, the period of waiting is three courses, or three months[57] if the woman is not subject to courses[58], whether she has discontinued from them or doesn't have them on account of minority If the dissolution is by death, the term is four months and ten days[59]. During the term, the woman must observe *"hidad"* or mourning The Prophet said that it is not lawful for a woman who believes in Allah and a future state, to observe *hidad* for more than three days on account of anyone except her husband; but for him, it is incumbent upon her to observe *hidad* for a space of four months and ten days'.

[56] As in classical law, the *idd*operiod is defined as three menstrual cycles after the divorce, three lunar months of the wife is not subject to menstruation, or until delivery of the child or termination of pregnancy if the woman is enceinte.
[57] Quran 11:288
[58] Quran LX:4. The same verse prescribes the period in case of pregnancy.
[59] Ibid.

She should not use perfume, unless there is a real danger to her health, or other ornamentation. She should remain indoors for most of the time, unless she is forced to earn a living. She may not be courted during this period[60] but on its expiry, she is free to marry any one whom she pleases.

Generally, both parties to the marriage contract have an opinion for divorce, but the husband's right in this respect is much greater than that of the wife. The husband can dissolve the marriage tie at his will. A divorce can also take place by mutual agreement. But the wife cannot divorce herself from her husband without his consent. She can of course purchase her divorce from her husband and can havethe marriage dissolved by *tafwee*zi.e. delegation.

If after a divorce, a reunion occurs, it will be regarded as a fresh marriage. In that case, the only possibility is that the woman needs to marry another man who varies from 3-12 monthly periods for different opinions[61]; consummate the marriage and get divorced and remarry the first husband again after *iddat*. However, there can be no more than two reunions. It allows a man to be thoughtful and composed in such serious matters, and the marriage with another man allows a woman to evaluate if there are other men better than her first husband that she would like to marry. There is no compulsion in her getting divorced from the second husband, if she likes him better than the first one[62]. The third divorce is a final one. It is irrevocable. It is known as *talaqba'inkubra* meaning that the husband and wife cannot reconcile and be married again, after the wife has been married to and divorced from another man[63].

There are five main forms of divorce in Muslim Personal Laws in Nigeria. These are *talaq, mubarah, khul 'u, tadridorfaskh and zilhar, Ila and lia'n.*

(a) *Talaq,* also known as *Talaq Sunni* is where the husband repudiates the marriage. However, a woman who has dictated certain terms with her husband before the formalisation of her marriage has the right to demand that the husband pronounces talaq when he breaches any of the terms. The effect of *talaq* is that the wife does not have to reimburse her *mahr (dower)* or any marriage expenses. There is delegated *talaq* known as *talaq-tafeez*. in delegated *talaq,* the husband can assign his right to *talaq* or repudiation to his wife. This is usually agreed upon at the time of the

[60] Quran 11:235
[61] Surah 2:228
[62] Quran 11:224-232; 4:34-35; 4:127-130
[63] "Divorce-The Dissolution of a marriage in Muslim Personal Laws in Nigeria", (Boabab Legal Literary Leaflet No.2) www.boababwomen.org/Dovorce.doc (Accessed 20 May 2023).

marriage contract, either in writing or with two witnesses present. The husband cannot legally delegate his right of *talaq* to any person except the wife herself.

(b) Mubarak is where both parties decide to put the marriage to an end. This is a divorce by mutual consent of the husband and the wife. This is usually initiated by the woman and decided by a court. However, if both husband and wife wish, they can agree to it between themselves, or with guardians, *walis*. The effect of*mubarah* is that the wife does not have to pay for her freedom from marriage.

(c)*Khul'u* is where the wife offers ransom to obtain her release. It is also known as divorce by ransom. In *khul'u* divorce, the husband and wife agree on a divorceand the wife agrees to pay the husband and agreed sum for her freedom. Where there is dispute over the "ransoms", the case will be decided by the court, which would fix a "ransom".

(d) *Tadriq or Faskh* is where the wife seeks her release on the ground of violation of the marriage terms by her husband. In this form of divorce, the court arbitrates and can pronounce a divorce. Cases of this sort are usually brought by women since the men have the right to *talaq*; that is unilateral divorce. Where a complaint is made, the court is obliged to investigate its truth by independent investigation, by hearing witnesses or by accepting an oath sworn by the husbandand wife. The application for court-decided divorce must contain one or more of the following grounds:

(i) Failure of husband to provide maintenance- shelter, food, medical expenses, clothing.

(ii) Defect on the part of the husband or wife, for example, where the husband or wife is insane or impotent or frigid.

(iii) Prolonged absence.

(iv) Injury or discord between the wife and husband.

(v) Failure to provide sexual satisfaction.

(vi) Refusal of husband to enable wife undertake her religious obligations, for example if the husband refuses his wife to go on pilgrimage.

The effect of the court's order of divorce is that the wife does not have tomake any payment to the husband or reimbursement of *mahr*.

(e) *Zihar, Ila and Lia'n* are regarded under one form in Nigeria. *Zihar* is divorce when a man compares his wife to his mother. *Ila* is divorce when the husband has made an oath that he will abstain from sexual intercourse for four months or more and he carries it out. *Lia'n* is divorce where a husband accuses his pregnant wife of committing adultery and therefore disowns paternity. These forms are rare nowadays. The effect is that the wife does not have to make any payment or reimbursement of *mahr* to the husband[64].

4.0 Dissolution of Islamic Law Marriage in India

Marriage or *nikah* in Islamic law is a contract pure and simple needing no sacred rites. All that is necessary is offer and acceptance made in the presence and hearing of two male or female witnesses and recording the factum of marriage in the *Nikah* Register maintained in every mosque signed by the parties and attested by witnesses. It is payable to the wife on the dissolution of marriage by death or divorce. In India, there is no need to register Muslim marriage, as there is no law requiring registration[65].

There are six forms of divorce recognized under Islamic law in India. They are *talaq, talaq-i-tufweez, khula and mubaraat, Illah, zihar*and*lian* discussed as follows:

(a) *Talaq* confers on muslim husband the privilege of being able to discard his wife whenever he chooses to do so for reasons good, bad or indifferent; indeed, for no reason at all[66]. This is the release from the marriage tie immediately or eventually[67].

(b) *Talaq-i-Tufweez,* also spelt *Talaqetafwiz*or *Talaq buTafweez* is the exercise of the right of divorce by the wife by virtue of the power delegated to her husbandat the time of marriage or even thereafter.

[64] "Divorce- The Dissolution of a Marriage in Muslim Personal Laws in Nigeria" (Baobab Legal Literacy Leaflet No. 2) www.boababwomen.org/divorce.doc (Accessed 30 May, 2023)
[65] http://www.legallight.in/muslimsmarriageact.html (Accessed 20 may 2023)
[66] Ibid
[67] http://www.helplinelaw.com/docs/divorce-muslims/divorce-muslims2.shtml (Accessed 20 May 2023).

(c) *Khuia and Mubaraat* are two forms of dissolution of marriage by mutual consent. Muslim law recognizes two forms of divorce by mutual consent; *khul or khula* which is divorce at the request of the wife and *mubaraa or mubaraat* which is dissolution of marriage by agreement[68].

(d) *Illah* is a constructive divorce in which a husband of sound mind swears not to have sexual intercourse with his wife for four months and abstains from doingso.

(e) *Zihar* is a mode of divorce in which the husband compares his wife with his mother or any other female within the prohibited degree.

(f) *Lia'n* is a divorce in which there is imputation of adultery to the wife by the husband and the wife is entitled to file a suit for dissolution of marriage on the false charge of adultery[69]. This mode of divorce is known as divorce by Judicial Decree under the Dissolution of Muslim Marriage Act 1939 of India[70].

5.0 Grounds for Dissolution of Marriage under the Muslim Marriage Act, 1939

The Dissolution of Muslim Marriage Act l939[71] of India introduced changes to the extremely restricted *Hanafi* rules on judicial divorce at the petition of the wife by the adoption and adaptation of certain *Maliki* principles. There are nine grounds upon which a woman is entitled to obtain a decree of dissolution of her marriage under the Act[72]. By the provisions of Section 2 of the 1939 Act, a Muslim woman may file for divorce on the following grounds-

(a) That the whereabouts of the husband have not been known or are unknown for four years
(b) That the husband has neglected or has failed to provide forher maintenance for a period of two years.
(c) That the husband has been sentenced to imprisonment for a period of seven or more years.
(d) That the husband has failed to fulfil his marital obligation for a period of three years.
(e) That the husband was impotent at the time of marriage and continues to be so.

[68] http://www.legallight.in/,uslimsmarriageact.html (Accessed 22 May 2023).
[69] Ibid.
[70] http://www.helplinelaw.com/docs/divorce-muslims/divorce-muslims3.shtml (Accessed 20 May 2023).
[71] This Act is applicable in all States in India except Jammu And Kashmir.
http://chdslsa.gov.in/right_menu/act/pdf/muslims.pdf (Accessed 27 May 2023)
[72] http://www.law.emory.edu/ifi/legal/india.htm (Accessed 27 May 2023)

(f) That the husband has been insane for two years or is suffering from serious illness harmful to the wife such as leprosy or a virulent form of venereal disease.

(g) That the husband has been cruel in the form of habitually assaulting the wife, associating with women of evil repute, forcing the wife to lead an immoral life, interfering in the wife's property, obstructing the wife to observe her religious practices, not treating the petitioner equally with the other wives etc[73].

(h) That the petitioner was given in marriage before attaining the age of 15 years[74]. The woman having been given in marriage by her father or guardian before she attained the age of 15 years, must repudiate before attaining the age of 18 years[75]. There is however a provision to this provision which is that, as at time the wife is repudiating, there has not been any consummation ofmarriage[76].

(i) Any other ground which is recognised as valid for the dissolution of man under Muslim Law.

On the other hand, apostasy by the Muslim wife, including conversion another religion, does not in itself dissolve her marriage. The Muslim husband retains the right to repudiate his wife extra-judicially, and from the available sources it appears that the most common form of divorce is the *triple talaq*. *Triple talaq* or divorce is a recognized but disapproved form of divorce and is considered byIslamic jurists as an innovation within the fold of Sharia. It commands neither the sanction of holy Quran nor the approval of the holy Prophet[77].

The stance of pre- and post- independence courts has generally been to accept extra-judicial repudiation as 'good in law, bad in theology'. A major issue of concern is the determination of the time from which maintenance becomes due in cases where the *talaq* has not been communicated to the wife, but the validity of repudiations has not been called into serious question[78].

[73] http://www.helplinelaw.com/docs/divorce-muslims/divorce-muslims3.shtml (Accessed 19 September 2023)
[74] http://www.legallight.in/muslimmarriageact.html (Accessed 19 September 2019)
[75] http://www.helplinelaw.com/docs/divorce-muslims/divorce-muslims3.shtml (Accessed 19 September 2023)
[76] http://www.law.emory.edu/ifi/legal/india.htm (Accessed 19 September 2023)
[77] http://www.helplinelaw.com/docs/divorce-muslims/divorce-muslims3.shtml (Accessed 19 September 2023)
[78] http://www.law.emory.edu/ifi/legal/india.htm (Accessed 19 September 2023)

5.1 Registration of Muhammedan Divorces

The registration of Muhammedan Marriages and Divorces Act 1876 is in operation in Bihar and West Bengal. Other states of the federation alsosimilar Acts, and there are facilities for voluntary registration. However, registration is not a requirement in India.

5.1.1 Maintenance of Islamic Wife upon Divorce

With regard to maintenance upon divorce, classical *Hanafi* law hasmodified in India by the Muslim Women (Protection of Rights on Divorce)1986, passed following fierce protest by sectors of the Muslim communityviewed the Supreme Court's ruling in the Shah Bano case as a gross interference in matters of Muslim personal status. In *Mohammad Ahmed Khan v. Shah Bor Begum*[79], the Supreme Court ruled that there was no conflict between classical *Hanafi* law, which only specifies the obligation to maintain a wife during her*idda* period, and the requirement to support a former wife unable to maintain herselfestablished by state legislation. The Act entitles the divorced Muslim woman to a reasonable and fair provision and maintenance to be made and paid to her within the*idaa* period by her former husband. Court practice allows the Muslim divorcee to appeal to the courts if her former husband has not provided her with a reasonable sum for maintenance during her *idda* period. The Act also stipulates that the divorced wife is entitled to any outstanding *dower*, any property given her before or during marriage and maintenance for children in her custody born before or after thefinalisation of the divorce. The Act specifies that its application pertains to marriages conducted according to Muslim law where a Muslim woman has obtained a divorce from or has been divorced by her husband in accordance with Muslim law. The Act directs that if neither the former wife nor husband has the means to provide for her support, the responsibility of maintenance of the divorcee falls on her relations, that is, those relatives that would stand to inherit from her. If she has no close relations or they are unable to support her, liability falls to the State *Waqf* Board. Section 5 of the Act also allows for a divorced Muslim woman and her former husband to declare to the Court their willingness to be governed by the provisions of Sections 125 to 128 of the Code of Criminal Procedure[80] relating to the maintenance of dependants unable to support themselves[81].

[79] AIR 1985 SC 945
[80] 1973 (2 of 1974)
[81] http://www.law.emory.edu/ifi/legal/india.htm (Accessed 19 September 2019)

In the first reported case relating to the Act, *Ali v. Sufaira*[82], the Kerala High Court rejected a narrow interpretation of the legislation as only requiring Muslim men to support their divorced wives during the *idda* period. Rather, the Court stated that the appropriate interpretation of Section 3(1)(a), which declares *interalia* that "A divorced women shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the *idda* period by her former husband", was that maintenance during the waiting period and fair provision were two separate issues. Thus, the court ruled that the Muslim divorcee is entitled not to only maintenance for her waiting period, but also a reasonable and fair provision, as provide 'for her future livelihood, from her former husband.' This has since been confirmed by a large number ofjudgments[83].

5.2 Choice of Law in dissolution of Marriage

At the level of pluralism of law at various levels, faced with the problem of choosing between or among systems of laws that apply within a particular area of region. The implication is that the territorial law of Oyo State for instance applies to all persons domiciled or resident within the state. Ibo customary law on the other hand applies to any Ibo domiciled or resident or involved in an act, irrespective of the nature in Oyo state when customarylaw is sought to be applied. We have within the context of Pluralism of laws, two or more systems of law operating within a particular locality side by side if analysed.

In the real sense, fundamentally we have within Oyo state, Yoruba, Ibo and Hausa among other tribes, start and concluding different legal transactions within the state. The indicator as to what law should apply can in no way be the place of action or event as the place remains the same. The choice of law in any particular situation is based on the ethnic group or religion (In case of Moslem law) to which the individual concerned belongs whatever be the case, a marriage between an Ibo couple in Oyo state for instance will be governed by Ibo customary law regardless of their place of domicile while a Hausa couple will be governed by Moslem or Muhammadan Law if both are practicing Moslems[84].

[82] 1988 KLT 2
[83]http://www.law.emory.edu/ifi/legal/india.htm (Accessed 19 September 2023)
[84]Adesubukan v Yinusa (1971) NWLR 77

However, it is on this ground that Yoruba or Ibo customary law and Moslem or Muhammadan Laws are referred to as a personal system of law. The consequences are that these laws apply to the individual concerned regardless of the place where an act in that situation is done or an event occurs. It is important at this juncture to notice and make clarification between "personal laws" and "personal system of law" personal law refers to the quantum of territorial law that applies to an individual domiciled in such territory, particularly in the area of his domestic relations no matter where tie or she is physically resident[85] personal system of law on the other hand applies to a personal as a result of being a member of a particular society, tribe or ethnic group or being a follower of Prophet Muhammed regardless of wherever he resides. It is important to make this clear that neither personal law nor personal system of law applies to all legal actions and transactions made by an individual outside the particular territory or within the purview of customary or Muhammadan Law[86]. Personal law applies only to the domestic relations of an individual such as marriage, divorce, distribution of intestate estate of deceased, validity of wills, legationary and legitimating of children, custody and guardianship of infants among other. However, a personal system of law may apply to the entire activities of an individual; includes all civil actions or transactions. Also, other than most area of criminal prescriptions a personal system of law may apply to a personal system of law may apply to areas of tort, contract in addition to matters of domestic relations.

At this juncture, it is important to know the circumstance in which people may obtain divorces decrees in a place in whichthey have no permanent stay or habitual residence and criteria for recognizing the divorce granted in other jurisdiction other than jurisdiction as we have international trade across different boundaries so also our people get married to people of different nationalities. Where we have this type of unions, parties may face with problem of choice of law that will guide the petition, the courts with jurisdiction in respect of the proceeding and how the divorce decrees or order would be enforced[87]. These can be made worse most especially where the parties are experiencing personal animosity between themselves which have let to the breakdown of their marriage. In most occasions spouses move themselves and or their personal belongings to other jurisdiction in order to evade any likely liabilities attached to the

[85] N. S. Molcolm, International law, (United Kingdom, 4th Edition, Cambridge University press, 1977)
[86] I. O Agbede,Legal pluralism (Ibadan, ShuneIson 1996) P. 113.
[87] http://www.conflictofmarriage-lawsaccessed24/01/2023

divorce proceedings[88] or they move to create personal jurisdiction so that they can engage in forum shopping for instance, where a German man marries a Turkish woman and they both live in United Kingdom until the breakdown of their marriage the development that prompted wife to relocate to Nevada because she has heard that the courts of the U.S allow quick divorce and give generous maintenance and awesome property settlement awards when the husband hears this plan, he moves with his personal belongings to Ireland because he has heard that Irish courts do not recognize and enforce the U.S divorce orders including with all the ancillary reliefs.[89]

However, three public policies are relevant in the general conflict system, they are;

1. Avoiding what is called "limping marriage" if possible, there should be international uniformity in defining somebody is marital status quo that people will not be treated as marriage under the law of a state, but not marriage under the law of another. However, there may be circumstances in which it would be quiet unjust and inappropriate for the courts of one state to be bound by another state's laws as to status
2. *Favour matrimonii* upholds the authenticity of all marriages entered into with a genuine commitment. But as state become increasingly secular and allow the divorce of marriage through no fault divorceand other less confrontational mechanisms, the policy for recognition, acceptability and enforcement of foreign decrees may be changing from *favour matrimonii to favour divortii*(that is upholding the validity of the divorce wherever possible)
3. Though not always, the results of any litigation should give effect to the legitimate expectations of the parties as to the validity or termination of their marriage. Most U.S State has codified this concept with putative spouse laws. Alternatively, a minor flaw in the marriage ceremony should not invalidated marriage.
4. That the application of all rules should, not in all situations produce predictable and appropriate outcomes. There is a clear benefit that laws should be certain and easy to administer. Courts have the benefits of expert evidence and time in which to conduct their legal analysis. But the same issues arise almost everyday situations where immigration officers, social welfare and tax authorities, and businesses will have to decide whether persons claiming an eligibility or a liability based on their status as a

[88] Ibid.
[89] http://www.choicelawindivorce

spouse are legally married. If conflict rules are obscure and complicated, this can result in real difficulties for all involved[90].

But the conflict rules must be consistent with the forum's domestic policies in relation to marriage. Further policy considerations are:

1. Even though policies related to area life reflect the views, opinions, and the prejudices of that area, local laws have a strong claim to specify the formal requirements for marriages celebrated within their jurisdiction after all, the reason that the *lex loci celebration*is usually accepted as the law to determine all formal requirement for the marriage). For example, the public interest requires that marriage ceremonies are performed openly and with due publicity, with all legal marriages properly recorded.
2. The public policy underpinning the lexfori (the law of the forum court) will allow the court to ignore foreign limitations on the right to marry which are considered offensive for example, those based on differences of race or ethnic origin, or which allow persons of the same biological sex the capacity to marry themselves.[91]*Laws* provides:
3. A marriage which meet up with the requirement of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage." i.e. it introduces form of proper law test of policy which could potentially lead to the application of a third state's policies which is a confusing possibility. This principle emulates from the "full faith and credit" clause of Article IV of the constitution of the United State of America[92].

5.3 Legal Termination of Marriage

A distinction must be made between forms of divorce that are based in a court system administered under a system of law, and divorces that take place in quasi- or extrajudicial setting, i.e. without any formal supervision from the local court system. In both cases, once jurisdiction has been established, the *lexfori*will be applied to determine whether the local

[90] Article IV of the Hagne convention on recognition of divorce and legal separation 1970
[91] Some states laws e.g section 283, second Restatement of conflict of laws, united states.
[92] Ibid

ground(s) of divorce have been complied with and, if so, the marriage will be terminated with or without ancillary orders being made[93].

5.4 Judicial Proceedings

Since this is an issue affecting the status of the parties, the standard choice of law rules would either be:

- The *lex patriae* (the law of nationality) or habitual residence applied in the civil law courts (see Article 1*Hague Convention on Recognition of Divorces and Legal Separations* 1970); or
- The *lexdomicillii* (the law of the domicile) applied in the common law courts.[94]

Although the law of the nationality may be reasonably easy to identify since it is often merely a matter of registration in the given country, a person may have, say for instance, a Greek nationality but have had a permanent residence in New York State for thirty years without becoming a naturalized American. Insisting on a test under Greek law may not produce acceptable or unacceptable result.

In the common law, marriage can produce a common domicile for the spouses with the wife taking the domicile of the husband. This rule is derived from the proposition that a dependent wife will go with her husband in all aspects of her life. Although this provides a convenient law. Which is usually easy to identify (since the requirements for change of stay or domicility demonstrating a desire to reside indefinitely in the state of choice, the domicile of the husband is difficult to alter) it may produce a result in which a person is domiciled in one state but the matrimonial home and all other feature of the parties' lives may be in a second state. This problem is aggravated by the rules relating to the revival of the domicile of origin when a domicile of choice is abandoned. For example, a husband with a domicile of origin in Japan establishes a domicile of choice in China where he marries a woman with a French domicile. When the marriage breaks down, the husband abandons his home in China and goes to live in Singapore. Immediately upon his leaving China, his Japanese domicile revives and his wife's domicile also changes to that of Japan even though she might never have set foot in that country. To avoid both the patriarchal implications and potentially unfortunate legal consequences

[93] Ibid

[94] Article I-II Hague convention on recognition of Divorces and legal separation1970

implicit in the domicile of dependence, many states have amended their laws to permit women to retain their domicile of origin upon marriage, or to established a domicile of choices independently of the husband during the subsistence of the marriage. In cases where the spouses have different domiciles, the choice of law rule must refer to both *lexdomicilii.*

Permanent residence may be a more satisfactory connecting factor than domicile because a person's long-term residence would appear to offer a more practical basis for recognition, whatever his or her intentions may be. Although intention is relevant to establishing a person's place of residence, it is a less demanding test than for domicile. But it could lead to form shopping with a petitioner living in a state only long enough to establish permanent residence under that state's law and so evade obligations or gain unfair advantage. All U.S. state have time periods for establishing *residency* before divorce jurisdiction can be granted[95].

Habitual residence has become the leading factor in unraveling a jurisdiction entanglement revolving custody issues raised in a divorce action. Parents may live in separate sate when filling for a divorce. Divorce laws allow the parent to file the divorce in either state. However, custody laws only allow jurisdiction to exist in the state where the child or children reside. In 1997 the Uniform Child Custody Enforcement Jurisdiction Act (UCCJEA) was created to address the question of which state has jurisdiction over a child custody case. The UCCJEA primarily rules jurisdiction goes with the state of habitual residence of the child[96].

Within the European Union,but excluding the member nation of Denmark, Regulation 2001/2003 (known as Brussels II) sets out the rules on Jurisdiction and the recognition and enforcement of judgments in matrimonial matter and in matters of parent responsibility for children of both spouses except for orders relating to matrimonial property. Jurisdiction is allowed to the courts of the Member State in which one or both spouses had a common domicile, a common nationality or were habitually resident. Once proceedings have been initiated, other state must refuse jurisdiction. Once a court accepts jurisdiction, it is for the *lexfori*to apply its

[95] Ibid
[96] Article XII, the Uniform child custody Enforcement Jurisdiction Act (1970)

own choice of law rules: both Irelandand the United Kingdom apply the *lexdomicilii;* the other EU state apply the law of habitual residence[97].

5.5 Quasi- or extra-legal proceedings

The most common forms of quasi-legal divorce are the Islamic forms of divorce known as the talaqand its less well-regulated version of triple talaq, and the form of divorce in Judaism known as the*get*which is regulated by the Beth Din (see {1}). Unlike the talaq, the process to obtain a get must occur at a specific place and with specified documents.

The talaq

For a discussion of the relationship between the talaq and secular laws, see talaq in non-Islamic state. Otherwise, there is a clear public need to consider whether, in an increasingly multi-racial and multi-ethnic society, transnational Islamic divorces can or should be recognized for these purpose, a distinction is usually drawn between the Niah form of talaq which is the normative form of *procedural*talaq, and the classical *bare* form of talaq which is used in India and in Azad Kashmir[98].

If the talaq is executed in a state where it is effective to terminate the marriage, this potentially affects the status and capacity of the spouses so that they are then free to remarry. Within the conflict system, the enforcement of foreign judgments is a reasonably well-regulated area. But this form of divorce is only quasi-judicial at best, so it falls outside the normal rules. The general expectation as tochoice of law, depends on the characterization of the issue. As a form of divorce, the rule might be that the *lex loci actus* (the law of the place where the transaction took place) should be applied and recognized universally so that the parties would avoid a limping marriage (i.e. that whether they are considered married will change depending on which states they visit or reside in). However, this may be against public policy because one of the parties is seeking to evade some mandatory provisions of law or it is not in the best interests of any children (see parent patriae). If the characterization is status/capacity, this will be determined under the *lexdomicilii* (the law of the domicile) in a common law state, and under the *lex*

[97] Ibid
[98] http://www/law.emorg.edu/ifi/legal/india.htm (Accessed 14 September, 2023)

patriae(the law of the nationality) or habitual residence in a *civil law* state. Alternatively, the court seized of the matter might apply the *lexfori*(the municipal law of the forum state)[99].

The best answer is always to produce an *in rem* solution, i.e. wherever possible, the result must be accepted in the majority of states around the world. Thus, if the talaq is effective under the *lex loci actus* and recognized under the laws relevant to determined status and capacity, it will be recognized so long as the best interests of the children are protected in any orders or agreements made by the parties. For example, in English law, part II of the Family Law Act 1986 draws the distinction between a divorce obtained by "judicial or other proceedings" and the divorce obtained "otherwise than by means of proceedings"[100].

- It is effective by the *lex loci actus* (the law of the place where it was obtained), and
- At the relevant date, either party was:
  Habitually resident in, domiciled either in accordance with the local law or English law, or a national of that foreign country. But a "bare" talaq will only be recognized in UK if:
- It is effective by the law of the country where it was obtained and
- At the relevant date, each party was domiciled in that country (or if only one was domiciled in another country where the bare talaq was recognized)[101].

And no recognition will be allowed if one of the parties has been habitually resident in the UK throughout the period of one year immediately preceeding the pronouncement. The intention is to prevent one spouse from evading the local judicial system by traveling to a country that does permit the talaq[102].

The issues as to choice of law for the talaq is the same and, applying the Family Law Act 1986, the get qualifies under the first limb as "Judicial or other proceeding".

[99] Ibid
[100] http://www.legalight.in/muslinmarriageact.htm (Accessed 14 September, 2023)
[101] Ibid
[102] Ibid

6.0 Japanese divorce

Japanese family law is designed to encourage the private resolution of family issues. Under the "family registration" (koseki) system, changes I family status and relationships do not require official approval. Article 763 of the Civil Code of Japan authorizes a husband and wife to divorce by mutual agreement (*kyogirikon* divorces), and more than 90% of all Japanese divorces adopt this fact, simple and entirely non-judicial procedure. *Kyogirikon* divorce are entirely non-judicial without the involvement of lawyers or any tribunal. The only requirement are that each spouse should sign a form, known as a *rikontodoke*, in front of two witnesses, and that the form should be filed with the local registration office. The parties do not need to make any appearance at the registry office. International couples may obtain a consent divorce in Japan if one of them is a Japanese citizen: Horei Law on the application of Laws, Laws No. 10 of 1898 (as amended 2001), Act. 16. If the parties cannot agree, judicial divorces may be obtained through the court system[103].

The standard consent divorces (*kyogirikon*) have been recognized as "proceedings" within the meaning of the Family Law act 1986, such divorces can be recognized if either spouse was domiciled in Japan at the time[104].

Maintenance

In the EU, Regulation 4/2001 of 22 December 2000 on *Jurisdiction and the Recognitionand Enforcement of Judgment in civil and commercial matters* (Known as Brussels I) and Regulation 805/2004 of 21 April 2004 in respect of *Uncontested Claims* allow the almost automatic enforcement of all orders affecting maintenance when the parties are domiciled or habitually resident in the Member State with the exception of Denmark. The only exception are that enforcement would breach public policy in some way, the maintenance order cannot be reconciled with another judgment, or the application to enforce is "out of time"[105].

The United Nation Convention on the Recovery Abroad of Maintenance ("New York Convention") enables the transnational recovery of maintenance by creating a central Authority for maintenance by creating a Central Authority for Maintenance Recovery in the Department of

[103] Article 763 of the civil code of Japan

[104] Ibid

[105] Regulation 44, 2001 of December 2000 on Jurisdiction and Recognition x enforcement of Judgement in civil and commercial matter (cited also by AbdulAzeez in a related article published in 2018).

Justice, Equality and Law Reform which is responsible for transmitting and receiving maintenance claims under the convention[106].

Quick Divorce in the Dominican Republic is available to foreigners or Dominican citizens residing abroad, when both spouses agree to file this divorce before Dominican Courts. This procedure is very simple and only requires the attendance of one of the spouses during the hearing which takes usually less than half an hour and you can leave Dominican Republic the same day in the afternoon. It takes ten to fifteen days to obtain a divorces decree, which is to be sent to your home or office by courier[107].

The parties should sign a settlement agreement revised by an attorney in their jurisdiction in other to confirm it complies with spouses local laws. This document should include spouses complete data, a list of property, or statement of non-property, the statement regarding minor children and support agreement, your desire of divorcing before a Dominican Court and the authorization of one of the spouses to the other to attend to hearing on her/his behalf. The settlement agreement can be drafted by an attorney in your jurisdiction[108].

7.0 Conclusion

From the foregoing, having discussed different types of marriages, process and procedure upon which valid marriage can be celebrated. It has also been made clear how different marriages could be dissolved, process and procedure to achieve valid dissolution also been discussed extensively.

The impact of dissolution of marriage in our present daylife is great and it cannot be over emphasized. Dissolution or divorce as people used to called it has caused a lot of havoc in the lives of the children of the marriage, the increase in the level of insecurity, criminal acts and criminal tendency, poverty, teenage pregnancy, drug abuse and traffic in person are as a result of broken homes in our communities and if the trend of dissolution of marriage is not checked, it will definitely continue to expose innocent lives (children of the marriage) to great danger and such will have adverse effect on the security of lives and properties in our various communities.

[106] Ibid
[107] Ibid
[108] Ibid

Though, right from the inception of life, there have been separation but it was at minimal level and not as rampant as we have it today.

Also, divorce as prescribed by the holy Quran whereby the husband is expected to just inform the concerned wife by saying *'talaq'* meaning the marriage or union has endedis too simplicit, such may be abused by any arrogant and hot tempered husband, the requirement of that nature is advised to be subjected to further examination and re-consideration to ensure that it is not abused. The non-judicial method of dissolution of marriage under Customary law is common in our societies and among low income couples and illiterate which in most occasions are being abused by the customary law couples, and such has aggravated the increase level of divorce that we have today. The porous system of dissolution under Customary law and Islamic law however advised to be checked otherwise the number of divorce that we will have will outweigh the number of married couples in few years to come.

Finally, harmonization of dissolution of marriage systems and procedures are hereby called for to address the polarized and non-judicial systems and procedures for dissolving legalized marriages, doing this will encourage the young and the youths toenroll in the marriage institution as established and ordained by God as first institute and God's gift unto mankind[109].

Above all, to prevent incessant dissolution of marriage which has become a regular occurrence in all the Nigerian High Courts in most states of the federation, new law of marriage is highly recommended. Where issues like yardstick for love's measurement in marriage will be discussed and highly regulated. Other issues like marriageable age of and marriage criteria are important in the celebration of marriage and what determine them must be categorically stated.

[109] Genesis Chapter 2:24