



Universiteit Utrecht  Faculteit Rechtsgeleerdheid

Introduction to English Law

Lecture 5: Family Law

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Structure of the lecture

1. Topics covered
2. Marriage and civil partnership
3. Divorce
4. Matrimonial Property – a quick note!

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Topics covered

Relationships
Marriage and divorce
Civil partnership and dissolution
Cohabitation and separation


Children
Parentage
Parental responsibility
Adoption
Child care, protection and abduction

Financial Aspects
Marital property and maintenance





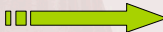
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Marriage: General (1)

Historical development
For many years left to the church
Highly informal: essential aspect was consummation (Genesis 2:24)
In 12th century – developed the idea of consent
In the end a compromise founded, that consented to marry and consummate

Problems
Clandestine marriages
Uncertainty as to validity with associated financial problems
Hasty marriages facilitated and problems created

 1753 – Common law marriage abolished

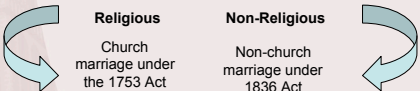
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Marriage: General (2)

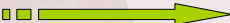
Lord Hardwicke's Act 1753
Public church ceremony compulsory after publication of banns on 3 consecutive Sundays
Act applied to all except: Royal Family, Quakers and Jews.

1836 Amendment
Anyone who didn't want to marry in church allowed. Now 2 systems:




Religious
Church marriage under the 1753 Act

Non-Religious
Non-church marriage under 1836 Act

 Consolidated in **Marriage Act 1949**

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Marriage: General (3)

Stages
Three stages to be distinguished:

- Preliminaries
- Solemnisation
- Registration

Formalities v. Capacity
What's the difference?

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Marriage: General (4)

Formalities

1. Parental consent
 - When is it needed?
 - Whose consent?
 - Can it be dispensed with?
 - Should it be retained?
2. Other preliminaries
 - Anglican preliminaries
 - Civil preliminaries


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Marriage: General (5)

	England & Wales		Scotland		Northern Ireland	
Type	Civil	Religious	Civil	Religious	Civil	Religious
1998	163,072	104,231	12,898	16,770	1,854	5,972
1999	162,679	100,836	12,434	17,506	1,833	5,795
2000	170,800	97,161	12,079	18,288	1,910	5,674
2001	160,238	88,989	11,487	18,134	1,881	5,400
2002	168,530	85,870	11,449	17,377	2,113	5,486
2003	<i>TBA</i>	<i>TBA</i>	13,861	16,896	<i>TBA</i>	<i>TBA</i>
Total	825,319	477,087	63,908	104,971	9,591	28,327

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Marriage: Religious Prelims (1)

Three possibilities


1. Banns
2. Common licence
3. Special licence

1. Banns

- 90% of Anglican weddings
- Residence
- Publicity
- Waiting time



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Marriage: Religious Prelims (2)

2. **Common licence**
 - Residence
 - Declaration
 - Publicity
 - Waiting time
3. **Special licence**
 - Act of Parliament 1533 – Archbishop of Canterbury
 - Normally used in relation to Oxbridge colleges

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Marriage: Civil Prelims (1)

Two options

- Superintendent Registrar's Certificate
- Registrar-General's Licence


1. **Superintendent Registrar's Certificate**
 - Notice
 - Objections and inquiries
 - Waiting time (14 days)
 - Special provision for house-bound/detained
2. **Registrar-General's Licence**
 - <1970 no possibility for procedure outside church/register office
 - Marriage (Registrar-General's Licence) Act 1970

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Marriage: Prelims Overview

Anglican	~	Civil
Banns	~	<i>No equivalent</i>
Common licence	~	Superintendent Registrar's Certificate
Special licence	~	Registrar-General's Licence



Important to note that the form of preliminaries has no impact on the method of solemnisation!

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Marriage: Solemnisation (1)

Categories of ceremony

- Civil marriage
- Marriage according to rites of Church of England
- Marriage according tot non-Anglican religious ceremony
- Quaker and Jewish marriages



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Marriage: Hours of Service


Except special and Registrar licence



Except Quaker and Jewish marriages

FOR 14 YEARS!
Only between 9am and 6pm

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Marriage: Capacity

Age
Older than 16, and need parental consent if younger than 18

Sex
Male and female: *Bellinger v. Bellinger*

Prohibited Degrees of Relationship
All listed in Marriage Act 1949, Schedule 1

Exclusivity
2 people, and cannot be involved in marriage or civil partnership
But, England does recognise polygamous marriages!

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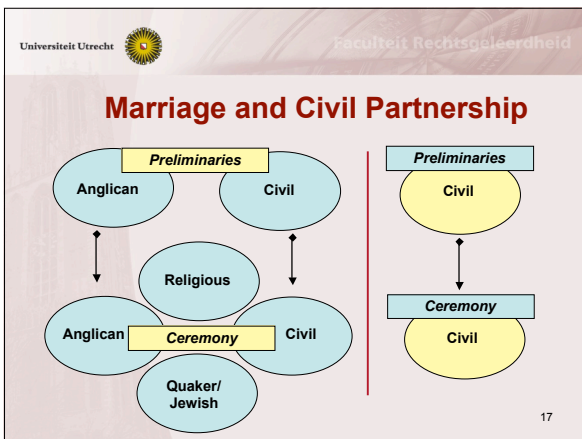
Civil Partnership

History
Registered partnership across Europe
Two proposals in 2001: HoC (Griffiths) and HoL (Lester)

The Act itself: Civil Partnership Act 2004
Replicates all the legislation applicable to marriage: word for word!
Restricted to two people of the same-sex
Creates an institution for all three jurisdictions in the UK

Not possible to register a civil partnership on religious premises
But, what are religious premises?

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Divorce

Get her what she really wants for Christmas!

Divorce – only \$95.99

Buy one, get one free

Divorce – only \$125.00




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Divorce

Grounds

One ground: irremediable breakdown of the marriage: s.1(1), MCA 1973

Proven

Five facts:

- s.1(2)(a), MCA 1973: adultery and intolerable
- s.1(2)(b), MCA 1973: "unreasonable behaviour"
- s.1(2)(c), MCA 1973: desertion for continuous period of 2 years
- s.1(2)(d), MCA 1973: consent and 2 years separation
- s.1(2)(e), MCA 1973: no consent and 5 years separation

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Divorces in 2000

Ground	Number	Percentage	Men	Women
1(2)(a)	33,310	23.5%	12,227	21,083
1(2)(b)	63,152	45%	11,668	51,494
1(2)(c)	680	0.5%	269	411
1(2)(d)	32,820	23.5%	13,261	19,559
1(2)(e)	10,498	7.5%	4,851	5,647
<i>Total</i>	<i>140,470</i>	<i>100%</i>	<i>42,276</i>	<i>98,194</i>

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