

## 1 Sacred, Social, and Personal Concepts of Marriage

- The sacred concept sees marriage as a religious holy union.
- The contract is a contract the couple makes with some higher order.
- The authority resides with, for example, in Christianity, God and the Church.
- The social concept gives priority to family obligations, and emphasizes self-sacrifice.
- The authority here resides with kinship, parents, and elders.
- In the former two, divorce is stigmatized.
- The personal concept gives priority to individual rights and personal happiness.
- Laws regulating marriage and the family are largely a provincial responsibility. Divorce laws are federal statutes.

## 2 Defining Marriage

- The Ontario *Family Law Reform Act* moved the province towards a limited legal recognition of common-law marriages.
  - The Act defines a spouse for the purposes of support obligations as either a married person or a couple living together for 5 years continuously, or within a relationship of some permanence where there is a child born and they have cohabited within the preceding year.
- Bill C-38 legalized same-sex marriages.
- Marriage has 5 main characteristics — it:
  1. Is a socially legitimate sexual union
  2. Is a public affair that must be publically registered
  3. Is undertaken with some idea of permanence
  4. Involves emotional commitment and support
  5. Is a legal contract with specific rights and obligations
- Marriage has to be solemnized by a Judge, Justice of Peace, or someone authorized by the provincial government (ie: clergy, church).

## 3 Legal Requirements to Marry

- To marry, each person must have the legal capacity to do so.
- If consent is coerced or affected by alcohol or drugs, the marriage can be declared void and an annulment granted.
- Most places prohibit marriages below a certain age and between close blood relatives.
- Bigamy is prohibited in most jurisdictions.

- Ontario's *Family Law Reform Acts* of 1978 and 1986 made changes to the legal rights and obligations of marital partners — spouses have identical rights and obligations in marriage.
- The spouses should manage the moral and material direction of the family, exercise parental authority, and assume the resulting tasks.
- Ontario has abolished the distinction between legitimate and illegitimate children.
- In all provinces, marriage creates a statutory right to share in the value of property acquired during marriage.
- "Net family property" under the *Family Law Act* should be divided equally between spouses unless it would be unfair.

## 4 Divorce Legislation

- By law, people must divorce in order to remarry.
- No-fault divorce laws shift the focus of the legal process from the moral questions of fault and blame, to economic issues of marital property, custody, and support.
- The *Divorce Act* of 1968 made divorce easier to obtain in Canada, and contains various grounds for divorce, including provisions for no-fault divorce.
- Section 3 allows for divorce on various sexual grounds, and physical/mental cruelty.
- Section 4 allows divorce when one spouse is imprisoned, addicted to drugs without prospect of rehabilitation, failure to consummate a marriage, and mental breakdown.
- A divorce can also be granted if a spouse can prove desertion (3 years apart) or if 5 years with no requirement to prove a "fault".
- In 1985, the *Divorce Act* further liberalized divorce laws, which allows couples to obtain a divorce on the grounds that there was a breakdown of their marriage as per section 8.
- A breakdown of a marriage is established if:
  - The spouses have lived apart for at least 1 year immediately preceding the determination of the divorce proceedings or were living separate and apart at the commencement of the proceedings; OR
  - The spouse against whom the divorce proceeding is brought has, since the marriage:
    - \* Committed adultery
    - \* Treated the other spouse with physical/mental cruelty

## 5 Property

- Prior to 1978, only wives could obtain alimony and had to apply through the *Deserted Wives' and Children's Maintenance Act*. It would only be provided in cases where there was desertion by her husband and a failure to maintain her, the parties had a valid marriage, they were living apart, and the husband was at fault in some way (adultery, cruelty, desertion).
- The husband could get out of alimony if he could prove adultery on the part of his wife.
- Ontario now has a gender-neutral spousal support law, which can be found in the *Family Law Act* of 1990.
- Usually, wives obtain custody of children in 85-90% of cases, and courts will typically order fathers to pay child support.

- The amount of support awarded will depend on things like financial needs, their capacity to become financially independent, length of time together, accustomed standard of living, etc.
- Note a spouse's misconduct is not a factor in awarding support.
- Both the *Family Law Act* and the *Divorce Act* both place the primary obligation on spouses to support themselves to the extent that this is possible and practical.

## 6 Marriage Contracts and Separation Agreements

- Prior to 1978's Ontario *Family Law Reform Act*, domestic contracts were limited in law as they were thought to undermine the stability of marriage.
- Now, couples that marry or cohabit are allowed to construct a marriage/cohabitation agreement, which can include a separation agreement.
- These contracts must be in writing, signed by the parties, and witnessed.
- These contracts usually protect property that each person has brought into the marriage, divide property acquired during the marriage, limit support obligations, for other person's children, etc.
- Note that the terms of a marriage contract/separation agreement are not necessarily binding on court, but carry weight.
- They can be disputed on grounds like fraud, duress, misrepresentation, inprovidence (manifest unfairness), coercion, and non-disclosure of assets.
- Courts have ruled that both parties of a domestic contract must enter it in good faith.