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NORTHERN REGION GHANA

THE GONJAS

(Bole, Damongo, Kpembe-Salaga)

RESTATEMENT OF THE LAW OF MARRIAGE AND DIVORCE

by

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MARRIAGE (Ka-Kil)

I. CAPACITY AND CONSENTS

1. PERSONAL CAPACITY

- (a) Age: Capacity to marry is not determined by age but by physical development. No person shall marry before the attainment of puberty. No woman shall marry before the commencement of her menstrual periods¹.
- (b) Physical Conditions: Physical deformity, deafness, dumbness, blindness, barrenness, impotence are not legal bars to marriage².

Leprosy (kuboto), sleeping sickness (kidesinde) and other diseases are not legal bars to marriage².

Mental incapacity, i.e. lunacy (ebomg) is not a legal bar to marriage².

- (c) Marital Status: A man may enter into any number of marriages³. No woman shall contract a marriage during the subsistence of a prior one. Capacity to contract a customary marriage is independent of and is not affected by the requirements for contracting a statutory marriage⁴. No person shall contract a customary marriage. (See s. 14(4) of the Marriage Ordinance, Cap. 127).

2. CONSENTS

- (a) Of the spouses: The prior consent of both spouses is not essential to the validity of a marriage.

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1. In practice, a girl is considered to be of marriageable age when she can fill up a large kakamba pot and carry it on her head unaided.
 2. These may, however, be social bars.
 3. A Gonja male who is a Muslim may limit himself to four wives at any one time. This is the influence of Muslim law on customary law.
 4. i.e. a marriage under the Marriage Ordinance, Cap. 127.

(b) Of the families of the spouses:

- (i) Of the family of the man: The consent of the man's family is essential to the validity of the marriage. The family is represented by the head of the man's family (eyenpe).
- (ii) Of the family of the woman: The consent of the woman's family is essential to the validity of a marriage. The family is represented by the head of the woman's family (eyenpe).
- (iii) Of the first or senior wife (Kawuriche): The consent of the Kawuriche is not necessary before a husband takes a subsequent wife.

3. PROHIBITED DEGREES (Ekishi)

(a) Consanguinity:

With the exception of cross cousin marriages (see Kukuruwe-kil II.
1(a) infra), a person shall not marry his/her blood relations (ekurupo).

Thus, a man may not marry any woman who is:

- (i) his direct paternal or maternal ascendant or descendant;
- (ii) his sister (full, consanguine (ntutupibi) or uterine (iniopibi));
- (iii) parallel cousins;
- (iv) aunt or niece.

(b) Affinity:

A man may not marry the following relations of affinity:

- (i) ascendant or descendant of his wife;
- (ii) the sister (full, consanguine or uterine) or his wife, divorced wife or deceased wife;
- (iii) the divorced wife or widow of his ascendant or descendant;
- (iv) his wife's sister's daughter;
- (v) his deceased brother's wife or divorced wife;
- (vi) any woman who will inherit from or care for his wife during illness.

(c) Fosterage:

A man may not marry:

- (i) his foster sister;
- (ii) his foster mother;
- (iii) foster sister of his wife or divorced wife;
- (iv) mother of his foster mother.

(d) Unlawful Conjunction:

A man may not marry at the same time or successively two women, so related to each other by consanguinity, affinity or fosterage that they could not have lawfully intermarried with each other if they had been of different sexes.

Thus a man may not marry at the same time or successively two sisters¹ (whether full, consanguine, uterine or foster) or an aunt and her niece.

A man may not have two wives at the same time and successively where one will inherit from or take care of the other when she is ill.

4. OTHER BARS TO MARRIAGE

- (a) Ethnic: There are no ethnic bars to marriage.
A Gonja can marry a person from another ethnic group.
- (b) Religious: There are no religious bars to marriage.
A Muslim may marry a non-Muslim.
- (c) Class/Occupational: There are no class or occupational bars to marriage.

II. FORMATION OF MARRIAGE

1. TYPES OF MARRIAGES

There is only one type of marriage (Ka-kil).

Of this, there are several forms:

- (a) Non-arranged marriages (Kijipo-kil)

The man or the woman is free to marry any person of his/her choice.

- (b) Arranged marriage.

This may be either:

- (i) Kukuruwe-kil. Cross cousin marriage. E.g. a union between a man and the daughter of his father's sister.
The marriage payments are considerably less with this form of marriage.
- (ii) Kepia-nsa. I.e. the marriage of a woman to a man chosen by the head of her family (Eyenpe).

2. MARRIAGE NEGOTIATIONS.

The standard procedure for contracting the different forms of marriage is by betrothal.

- (a) In non arranged marriages (kijipo-kil), the man takes the initiative of seeking a spouse. He approaches her through a go-between (usually another woman) and presents to her any sum ranging from 12/- to 40/-. This amount is known as ajipo-misherbi (love money). If the girl consents to the love affair, she accepts this amount and hands it to her female guardian (Echepe). The man then reports the matter to the head of his family, who then visits the head of the girl's family to obtain the latter's consent. The man pays repeated visits to the girl's home, taking gifts to the girl's guardian and/or the head of her family (eyenpe). On ceremonial occasions, the man is bound to present gifts in cash or kind (e.g. yams, zana mats etc.) These gifts are called Zansanbere or Kashaji. When the girl has attained the age of puberty, the head of the man's family sends the kukule (begging money) (see III. 3 infra) to ask for the hand of the girl in marriage. If the kukule is accepted, the parties are considered betrothed.
- (b) In Kukuruwe-kil (see II. 1(b)(i) supra), the marriage is arranged by the head of the man's family (eyenpe) or his father (etuto) and he presents the customary gifts (i.e. the zanzanbere (kashaji) and the kukule) on behalf of the man. (see (a) supra).
- (c) In Kepia-Nsa (see II. 1(b)(ii) supra), the head of a family (eyenpe) may arrange a marriage for a girl in his family to a man who has been of great assistance to him. The man then presents the customary gifts (i.e. zanzanbere (Kashaji) and the kukule). (See (a) supra).

3. BETROTHAL (Kachesa)

(a) At what time betrothal comes into effect.

Betrothal between a man and a woman comes into effect when the Kukule (begging money) has been presented by the head of the man's family (Eyenpe) and accepted by the head of the woman's family (Eyenpe).

(b) Legal consequences of Betrothal.

(i) On the betrothed parties inter se.

With the exception of the right of the female betrothed to marry the male betrothed, she acquires no legal rights by reason of the betrothal.

The male betrothed acquires certain legal rights by reason of the betrothal viz:

He has a right to marry the female betrothed;

He has a right to claim compensation from third parties for seduction of his betrothed;

He can sue the woman's father and/or the head of her family for breach of promise of marriage. The compensation is the refund of all the expenses that have been incurred by the male betrothed and/or the head of his family.

(ii) On the families of the betrothed.

The legal rights of the family of the male betrothed remain unchanged.

The legal rights of the family of the female betrothed are limited to the extent of the rights conferred on the male betrothed by the betrothal. (See II. 3(b) supra). The female betrothed is still under the guardianship of the head of her family.

(c) Termination of Betrothal.

Betrothal may be terminated in one of the following ways:-

(i) Repudiation by the man or the woman either expressly or by implication e.g. if the woman decides to marry some other person.

(ii) Marriage by the betrothed parties subsequently.

(iii) Mutual agreement of the parties and/or the heads of their families.

(iv) Death of either of the betrothed parties.

(d) Effect of Termination of Betrothal on Marriage Payments.¹

In the event of termination of the betrothal by the woman's repudiation, the marriage payments are recoverable.

No marriage payment shall be recoverable in the event of termination of betrothal by the man's repudiation, by the death of either of the betrothed parties or by the mutual agreement of the betrothed parties.

(e) Effect of termination of betrothal on children.

Children conceived or born during betrothal whether marriage follows or not, are affiliated to the man, if he was responsible for the conception.

1. See also Section III infra.

If the conception was by a third party, children conceived or born during betrothal where marriage does not follow are affiliated to the woman's father.¹

4. MARRIAGE CEREMONIES AND FORMALITIES

The following marriage ceremonies and formalities take place:

- (i) The presentation of the Kukule and the announcement of the betrothal by the heads of the two families.
- (ii) The departure of the bride (or her elopement) to the matrimonial home and the hospitality (kafokata) given to the man and woman who accompanied the bride. The bridegroom kills a hen to prepare food to welcome them.
- (iii) The presentation of one white cola nut (tumba-pushe) or a white native cloth and 12/- (tumba-waje) if the bride is chaste².

5. THE ESSENTIALS OF A VALID MARRIAGE.

The essentials of a valid marriage are:

- (a) Capacity. The parties must have the capacity to marry each other. (See I.1, I.3 supra).
- (b) Consent. The families of the spouses must consent to the union. (See I.2(a), (b) supra).
- (c) The acknowledgment of liability to pay marriage consideration (Kashe-pushe).

III. MARRIAGE PAYMENTS.

The following marriage payments are made:

1. Ajipo-misherbi (love money).

Character of the Ajipo-misherbi. This is a small sum usually between 12/- and 40/- presented by the man to the woman as a means of obtaining the woman's consent to the courtship. This amount is usually handed by the woman to her Echepe. This applies in the case of a non-arranged marriage (Kijipo-kil). (See II. 1(a) supra).

Return of the Ajipo-misherbi.

On termination of betrothal. See II 3(d) supra.

On the dissolution of the marriage. The Ajipo-misherbi is not recoverable on the dissolution of a marriage by death or divorce.

1. Such a child is known as Kuyurubi (illegitimate child). (Plural: Ayurubi).
2. The tumba-pushe is alternative to the tumba-waje. In areas where the tumba-pushe is preferred, e.g. Damongo, the white cola nut is presented whether the bride is chaste or not. If she is not chaste, the cola nut is split before presentation; if she is chaste, the nut is not to be split. In areas where the presentation of tumba-waje is practised, e.g. Bole, Kpembe, it is only presented if the bride is chaste. These gifts must be presented, even if divorce supervenes before their presentation. They are not recoverable.

2. Zanzanbere (Kashaji)

Character of the Zanzanbere (Kashaji).

These are gifts of yams, cola nuts, tobacco, guinea fowls, firewood, zana mats or small sums of money presented by the man and/or his Eyenpe on festival days and on visits to a woman's Echepe (female guardian) and/or Eyenpe (the head of her family).

Return of these gifts.

On termination of betrothal. See II. 3(d) supra.

On the dissolution of the marriage.

In the event of a divorce at the instance of the husband, the gifts are not recoverable.

In the event of divorce at the instance of the wife, the gifts are recoverable.

Upon the death of either party. These gifts are not recoverable.

3. Kukule (begging money)

Character of the kukule.

This is a small sum of money (usually about 12/-) presented to a woman's father as a formal request for the woman's hand in marriage.

The kukule is not essential to the validity of a marriage.

Source of the Kukule.

The kukule is provided by the man or the head of his family (Eyenpe).

Time for presenting the kukule.

The kukule is presented before the announcement of the betrothal.

Distribution of the Kukule.

The kukule is distributed among members of the woman's family by her Eyenpe (the head of her family).

Return of the Kukule.

On termination of the betrothal. See II. 3(d) supra.

On the dissolution of the marriage.

In the event of a divorce at the instance of the husband, it is not recoverable.

In the event of divorce at the instance of the wife, it is recoverable.

On the death of either party. It is not recoverable.

4. Kicheto (Trousseau).

Character of the Kicheto.

This is an amount for the purchase of the bride's outfit. The amount is not fixed.

It is not essential to the validity of a marriage.

Source of the Kicheto.

It is provided by the man or the head of his family (Eyenpe).

Time for presenting the Kicheto

It is presented before the marriage takes place.

Return of the Kicheto.

On termination of betrothal. See II. 3(d) supra.

On the dissolution of the marriage.

In the event of a divorce at the instance of the husband, it is not recoverable.

In the event of divorce at the instance of the wife, it is recoverable.

On the death of either party. It is not returnable.

5. Kalichuro (Funeral Dues).

Character.

These are gifts in cash or kind provided by a husband in the performance of the funeral ceremonies of any relation of his wife. The amount is not fixed and depends on the relationship of the deceased to the wife. Usually a sum of money and a white burial cloth are given with either a sheep or a guinea fowl depending on the relationship.

Return of the gifts.

On the dissolution of the marriage.

In the event of a divorce by the husband, these gifts are not recoverable.

In the event of a divorce by the wife, these gifts are recoverable.¹

On the death of either party, these gifts are not recoverable.

6. Kasha-Pushe (Marriage Consideration)

(a) Character of the Marriage Consideration

The amount of Marriage Consideration is fixed by law.

It is 12/- and 100 cola nuts.

The acknowledgement of the liability to pay the marriage consideration (but not its actual payment) is essential to the validity of a marriage.

(b) Source of the Marriage Consideration.

The man or the head of his family (Eyenpe) is responsible for its payment.

(c) Time for payment of the Marriage Consideration.

It may be paid before or after the marriage.

(d) Distribution of the Marriage Consideration.

It is distributed among members of the bride's family by the head of her family (Eyenpe).

1. Except in Bole, where, after the funeral ceremonies, it is usual for a wife to present her husband with a native cloth in appreciation of the funeral dues (Kalichuro). If this was not done, the gifts are recoverable.

(e) Effect of payment of the Marriage Consideration.

The payment of the Marriage Consideration gives a father the right to the custody of the children of the marriage.

(f) Effect of non-payment of the Marriage Consideration.

- (i) The non-payment of the marriage consideration has no effect on the legitimacy of the children conceived or born during betrothal or during the marriage.
- (ii) The non-payment of the marriage consideration deprives a father of the custody of such children.
- (iii) There can be no valid marriage without an acknowledgement of the liability to pay the marriage consideration.

(g) Return of the Marriage Consideration.

On the dissolution of the marriage

In the event of a divorce by the husband, the marriage consideration is not recoverable.

In the event of a divorce by the wife, the marriage consideration is recoverable.

On the death of either party, the marriage consideration is not recoverable.

IV. MATRIMONIAL RIGHTS AND DUTIES

1. Residence. Conja marriages are virilocal and the wife must live in the matrimonial home set up by her husband.

2. Ranking of wives. The wives are ranked according to the order in which they are married.

3. Effect of ranking of wives. The first or senior wife (Kawuriche) is in a privileged position: she divides the domestic duties among the other wives. Household property (except animals) are under her care and control.

She distributes food among the other wives.

4. A wife may leave the matrimonial home temporarily with her husband's permission.

- (i) to visit her parents and relatives;
- (ii) for the purposes of her business and employment;
- (iii) in the performance of her duties as a wife;
- (iv) for other reasonable purposes.

5. Guardianship of wife.

On marriage, guardianship of a woman passes from her father to her husband. This:

- (i) gives the husband the right to institute or defend legal proceedings on the wife's behalf;
- (ii) makes the husband liable for the debts of his wife and for the payment of compensation in tort or contract on her behalf;
- (iii) gives the husband the right to advise her as regards her business transactions.

6. Maintenance.

A husband is under a duty to maintain his wife during the subsistence of the marriage, by providing clothes, food and other items necessary for the maintenance of the household.

The duty to maintain ceases if the wife abandons the matrimonial home without just cause.

7. The duties of a wife.

A wife's duties include:-

- (i) Preparation of food and maintenance of the household.
- (ii) Bear and care for children.
- (iii) Obey her husband's lawful commands and observe his taboos.
- (iv) Sows and harvests on the farm.

8. Sexual Rights.

The husband has the sole right to have sexual intercourse with his wife.

There is a corresponding duty on the part of the husband to refrain from sexual intercourse with other women, not married to him.

Sexual intercourse cannot be refused unreasonably by either husband or wife to each other.

9. Chastisement.

The husband has a right to chastise his wife for her misconduct. This right must be exercised reasonably.

10. Wife's Property.

The self-acquired property of the wife and property given to her belong to her and are under her control. She can take all such property away on the dissolution of the marriage.

Property given to the wife by the husband for use in the matrimonial home is under the control of the husband and belongs to him on the dissolution of the marriage.

V. MATRIMONIAL OFFENCES (KACHEJI)

1. Remedies.

There are three different remedies for matrimonial offences:

(a) Ritual and Expiatory Ceremony

This consists in the presentation and the killing of livestock for purification and ritual cleansing. This remedy applies in cases of adultery. There are two kinds:

(i) Gbarza performed in cases where the male adulterer is within the same family groups (kakruwe) as the woman's husband.

(ii) Kebu-Longa performed in any other case¹.

(b) Monetary Compensation (Kicheji)

Formerly compensation was made in cowries. The amount was not fixed and was awarded by the chief.

Monetary Compensation is a modern development. The amount is not fixed; it is awarded by the Local Magistrate Court.

1. Kebu-Longa is not performed in Bole.

(c) Termination of the Marriage by Divorce

This could be done either judicially or extra-judicially.

2. Matrimonial Offences

(a) Adultery

Any man who commits adultery with another man's wife is liable to perform a ritual and expiatory ceremony (see V. 1(a) supra) with a goat and some fowls.

The offender has also to pay compensation (usually about £6) to the Chief and his cloth, trousers and mat are confiscated¹.

Adultery is also a ground for Divorce.

Modern Development. An aggrieved husband may now sue the paramour for monetary compensation in the Local Magistrate Court.

(b) The following are matrimonial offences for which the offender is liable to pay monetary compensation (kicheji):

- (i) Seduction of a married woman;
- (ii) Removing a betrothed girl from her father's custody;
- (iii) Impregnating a betrothed girl;
- (iv) Death in childbirth as a result of the impregnation²;
- (v) Rape².

(c) For other matrimonial offences, see Grounds for Divorce, infra.

VI. DISSOLUTION OF MARRIAGE

A marriage may be dissolved by the act of the parties i.e. by divorce or by the death of one of the parties.

A. DISSOLUTION BY DIVORCE

1. Procedure for Divorce

A divorce may either be arranged or agreed upon extra-judicially or be granted by a court.

(a) Divorce out of Court. (i.e. extra-judicial divorce)

This is a unilateral dissolution of the marriage by one of the parties. In the event of divorce by the husband, the wife is taken back by a kabo i.e. a messenger, back to her father's house.

(b) Judicial Divorce

Persons married in accordance with customary law may have their marriage dissolved in the Local Magistrate Court.

(See Courts Act 1960 (C.A.9) s. 98(1)(d))

The Superior Courts of Ghana have no original jurisdiction to dissolve such marriages.

(c) Divorce by Mohammedan Law

Any dissolution of marriage effected according to Mohammedan Law should be registered (s. 7 Marriage of Mohammedans Ordinance, Cap. 129, 1951 ed.)

1. Formerly, in the case of adultery with a Chief's wife, everything belonging to the offender was confiscated and he was beheaded.

2. Also a criminal offence as a fine is paid to the Chief.

2. Commencement of Divorce Proceedings

Divorce proceedings (judicial or extra-judicial) may be commenced at any time. Provided that no proceedings may be commenced by a husband when the wife is ill or pregnant.

3. Time at which divorce becomes effective.

The time at which a divorce becomes effective and the woman is free to remarry is as follows:

- (i) in the case of an extra-judicial divorce by the husband, when the husband divorces in the presence of at least one witness and the wife is taken back to her father's house by a messenger (kabo).
- (ii) in the case of an extra-judicial divorce by the wife, when she returns to her father's house without the animo revertendi.
- (iii) in the case of a judicial divorce, when the decree of dissolution is pronounced by the court (provided there is no appeal).
- (iv) in the case of a Mohammedan divorce, at the time of the registration of the divorce (s.9 of Cap. 129, 1951 ed.)

4. Grounds for Divorce

Against the Wife.

- Adultery
Refusal to render conjugal rights without just cause
Witchcraft
Theft
Unreasonable Jealousy
Disobedience
Striking the husband with a pestle (kudumuli)
Breaking the asure (fire) stones.

Against the Husband

- Adultery with a wife's relation
Impotence
Insanity
Cruelty
Unreasonable Jealousy
Refusal to render conjugal rights without just cause
Failure to maintain

5. Effect of Divorce.

(a) On marriage payments. See section III. supra

(b) On Property.

The self-acquired property of the wife and property given to her are under her control. She can take all such property away on the dissolution of the marriage.

Property given to the wife by the husband for use in the matrimonial home is under the control of the husband, and belongs to him on the dissolution of the marriage.¹

(c) On Children.

On divorce, the husband has the right to the custody of the children. (provided kasha-pushe (marriage consideration) has been paid). (See III. 6(e) & (f) supra).

(d) On right to re-marry

1. The wife may take these away if she is prepared to pay for them.

(i) On the right of the husband.

A husband may contract a further marriage whether or not a prior marriage has been dissolved.

(ii) On the right of the wife.

A woman may re-marry only after the dissolution of her prior marriage has taken effect.

(e) On Maintenance.

(i) Of divorced wife.

There is no obligation on the husband to maintain a divorced wife.

(ii) Of Children.

A father is obliged to maintain the issues of his dissolved marriage.

B. DISSOLUTION OF MARRIAGE BY DEATH

1. The Death of either spouse.

The death of a spouse automatically terminates the marriage.

2. Effect of Death

(a) On Custody of the Children

On the death of either party, the husband (or the family of the deceased husband) has a right to the custody of the children of the marriage, provided that the kasha-pushe (marriage consideration) has been paid (See III 6(e) & (f) supra).

(b) On the Marriage Payments (See Section III supra)

(c) On Property See the Restatement on the Laws of Succession.

(d) On the right to re-marry

(i) On the right of the husband.

A man may contract a further marriage whether or not a prior marriage has been dissolved by death.

(ii) On right of the widow.

A widow may only re-marry after her prior marriage has been terminated by the death of her husband.

Provided that no widow shall re-marry until the expiration of five months from the date of her husband's death.

VII. MARRIAGE UNDER STATUTORY LAW

1. The statutes relating to marriage are -

(a) The Marriage Ordinance (Cap. 127, 1951 ed.)

(b) The Marriage of British Subjects (Facilities) Ordinance (Cap. 128)

(c) The Marriage of Mohammedans Ordinance (Cap. 129)

These statutes apply throughout Ghana.

2. Marriage under Caps. 127 and 128.

- (a) Any person may contract a statutory marriage recognised as valid throughout Ghana in accordance with the provisions of Cap. 127. Such a marriage is monogamous in nature.
- (b) Capacity to contract a statutory marriage is independent of and is not affected by prohibitions imposed by customary law e.g. the payment of marriage consideration (kasha-pushe).
- (c) No person shall contract a statutory marriage during the continuance of a prior customary marriage.
(See S. 14(4) of Cap. 127.)

3. Marriage under Cap. 129.

- (a) Any person professing the Mohammedan faith may marry according to Mahomedan law.
- (b) Such a marriage should be registered (Cap. 129 s. 7).

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September, 1965.