



MULTI-TIERED MARRIAGE CONTRACTS IN NIGERIA  
AND THE NEED FOR REFORMING NIGERIAN  
FAMILY LAW

BY

IMAM-TAMIM, MUHAMMAD KAMALDEEN

A thesis submitted in fulfilment of the requirement for the  
degree of Doctor of Philosophy (Law)

Ahmad Ibrahim Kulliyyah of Laws  
International Islamic University Malaysia

DECEMBER, 2015

## **ABSTRACT**

The study examines the practice of contracting multi-tiered marriage in Nigeria with a view to identifying the reasons why Nigerians celebrate this type of marriage; the legal problems associated with this kind of marriage; how they could affect the operation of family law in Nigeria and whether there is need to reform the Nigerian family law. The nature of the operation of the different systems of marriage in Nigeria is examined in order to show the distinctiveness of each system of marriage and explains how their rules are being applied in practice. The study identifies and highlights some of the legal problems that arise as a result of the celebration of multi-tiered marriage contract so as to determine whether they warrant the reform of family law in Nigeria. The study adopts a qualitative methodology and employs both doctrinal and non-doctrinal methods of legal research. For the doctrinal method, the study uses a qualitative content analysis by analysing contents of library and online based literature, statutes and case laws. For the non-doctrinal method, the study uses semi-structured interview and participant observation to collect empirical data from targeted participants who are selected through non-probabilistic convenience and purposive sampling methods. It is found in the study that there are many lacunas in the operation of the three systems of marriage laws in Nigeria. While the unwritten nature of Islamic and customary laws is identified as a major lacuna, the obsolescence and legal centric attitude of the Marriage Act 1914 are found as the major lacunas in the Act. Many provisions of the Act are also found to be incongruous with the rules of customary and Islamic laws both of which the people highly regard. It is also found that different social, cultural and legal factors contribute to why Nigerians celebrate multi-tiered marriage contracts. Analysis of judgments and responses from the interviews suggests that the contract of multi-tiered marriage is susceptible to legal problems that could affect the couples, the courts and the state. It is also discovered that the weak model of legal pluralism operates in Nigeria and this equally lures couples into contracting multi-tiered marriage. It is therefore suggested that there is a need for legal reform of Nigerian family law by upgrading the weak pluralism to strong model of legal pluralism. The study also proposes a 'pragmatic approach' for the reform exercise, which includes restatement of customary family law, codification of Islamic family law and amendment of the Marriage Act. The study concludes that if the reforms herein suggested are genuinely implemented, they will improve the family law in the country and thus may significantly reduce the rate of divorce. It will also make Nigeria a beacon of reform for other multi-cultural and multi-legal societies.

## ملخص البحث

يهدف هذا البحث إلى دراسة عقد الزواج متعدد المستويات في نيجيريا بغية تحديد الأسباب الكامنة وراء تبني هذا النوع من الزواج في نيجيريا، وطبيعة تطبيق الأنظمة المختلفة في الزواج في أرجاء نيجيريا، وكذا الخصائص التي يتميز بها كل نظام من هذه الأنظمة مع بيان كيفية تطبيق قواعدها في الواقع. وقد سلطت الدراسة الأضواء على بعض المشاكل القانونية التي قد تنشأ من جراء تبني هذا النوع من الزواج، وذلك لمعرفة ما إذا كانت ثمة حاجة إلى إصلاح قانون الأسرة في نيجيريا. واتباعا للمنهجية العلمية فإن الباحث قد استخدم المنهج النوعي كما وظف المنهج المكتبي والمنهج غير المكتبي في البحث القانوني، أما ما يتعلق بالمنهج المكتبي فقد وظفت الدراسة أسلوب تحليل المحتوى المتمثل في تحليل الدراسات المكتبية وغير المكتبية كالدراسات على الشبكة العنكبوتية وكذلك القوانين والسوابق القضائية، أما المنهج غير المكتبي فقد أجرى الباحث مقابلات عديدة يهدف جمع المعلومات والبيانات التحريية من المشاركين المستهدفين، وقد تم اختيارهم عن طريق أسلوب العينات الاحتمالية والعينات العمدية. وقد أوضحت الدراسة أن هناك ثغرات كثيرة في تشغيل أنظمة الزواج الثلاث في نيجيريا، في حين أظهرت طبيعة القوانين الإسلامية والعرفية غير المكتوبة ثغرات أكثر، على أن تقادم قانون الزواج لعام 1914م والتمحور القانوني له يعتبر ثغرة رئيسية في هذا القانون. وقد لاحظ الباحث أن ثمة أحكاما في هذا القانون لا تتوافق مع قواعد القوانين العرفية والشرعية التي يقدرها الناس، كما أوضحت الدراسة أن العوامل الاجتماعية الثقافية والقانونية المختلفة قد أسهمت في دفع النيجيريين إلى تطبيق الزواج متعدد المستويات. وقد تبين من تحليل القضايا والردود من المقابلات أن عقد الزواج متعدد المستويات عرضة للمشاكل القانونية التي يمكن أن تؤثر سلبا على الأزواج، والمحاكم، والدولة على حد سواء. كما تبين أيضا أن ضعف نموذج التعددية القانونية المطبق في نيجيريا، جعل الأزواج يتقدمون إلى عقد الزواج متعدد المستويات. وعليه فإن هذه الدراسة توصي بإصلاح قانون الأسرة النيجيري وذلك عن طريق تقوية نموذج التعددية القانونية الموجود، كما تقترح الدراسة منهجا عمليا في سبيل تحقيق ذلك الإصلاح المنشود. وتخلص الدراسة في الأخير إلى أنه إذا تم اعتماد وتنفيذ الإصلاحات المقترحة حق التنفيذ سيتحسن قانون الأسرة في البلاد، الأمر الذي سيؤدي إلى تقليل نسبة الطلاق بشكل كبير، وجعل نيجيريا مثلا حيا لإصلاح المجتمعات الأخرى المتعددة الثقافات والقوانين.

## **APPROVAL PAGE**

The thesis of Imam-Tamim, Muhammad Kamaldeen has been approved by the following:

---

Norliah Ibrahim  
Supervisor

---

Mahamad b. Arifin  
Internal Examiner

---

Abdul-Qadir Zubair  
External Examiner

---

Waheeda Amien  
External Examiner

---

El Fatih Abdullahi Abdelsalam  
Chairman

## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

Imam-Tamim, Muhammad Kamaldeen

Signature.....

Date.....

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

**DECLARATION OF COPYRIGHT AND AFFIRMATION OF  
FAIR USE OF UNPUBLISHED RESEARCH**

**MULTI-TIERED MARRIAGE CONTRACTS IN NIGERIA  
AND THE NEED FOR REFORMING NIGERIAN FAMILY  
LAW**

I declare that the copyright holder of this thesis/dissertation is  
Imam-Tamim, Muhammad Kamaldeen

Copyright © 2015 by Imam-Tamim, Muhammad Kamaldeen. All rights reserved.

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below.

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purposes.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

By signing this form, I acknowledged that I have read and understand the IIUM Intellectual Property Right and Commercialization policy.

Affirmed by Imam-Tamim, Muhammad Kamaldeen

.....  
Signature

.....  
Date

*This thesis is dedicated to the glory of Almighty Allah for His guidance, protection  
and assistance all the time;*

*My parents, Khalifah Muhammad-l-Awwal Tamim and Hajia Risikat Lawal Tamim,  
for depriving themselves of the luxury of life to teach me the values of life and living;*

*My emerald, Hamdalat Abdulkareem, for redefining my perception of love and life  
and  
My first princess, Safiyyah Ayinke for enduring my long absence during her formative  
years.*

## ACKNOWLEDGEMENTS

A project of this magnitude cannot be completed without immeasurable support and assistance from many quarters. Therefore, I would like to acknowledge the contributions of the following people that made the completion of this dissertation possible. I would like to thank the Chairman of my supervisory committee, Professor Najibah Mohd Zin for her gentle but insightful critique; my supervisor, Assoc. Prof. Norliah Ibrahim for her unwavering interest in my affairs. I also thank Dr. Roslina Che Soh. You have all taught me lessons of life that I will forever be grateful for. I equally thank my thesis examiners, Prof. Abdul-Qadir Zubair; Assoc. Prof. Waheeda Amien of University of Cape Town and Assoc. Prof. Mahamad Arifin of AIKOL, IIUM for your insightful assessments and commendations.

I appreciate the support I got from Prof. Garimella of South Asian University, India; Dr. Roni Liberson of Tel Aviv University, Israel; Dr. Kerem Gulay of Havard Law School for helping to read through my first proposal and lending me part of your research knowledge and wisdom. I equally appreciate the support of all my respondents most who patiently answered my questions despite giving them short notices.

I am eternally indebted to my big mum, Alhaja Safiyyah Titilayo Usman for your motherly care and love. Sincerely, I am short of expression for you but Allah will forever endow you with happiness. I specially thank Allah for giving me the most wonderful and supportive parents in the world, *Khalifah M. L. Tamim* and *Hajia R. L. Tamim*. You both sacrificed your convenience for me and my siblings. You will reap the fruits of your labours, in sha Allah. I cannot thank you all enough. My siblings also deserve thanks for being wonderful. Space here cannot allow me to mention you all but I thank you. I also thank my parents-in-law, Prof. & Alhaja Y. A. Abdulkareem for loving me as a son and making my wife and daughter feel relaxed while I was away. Allah will prolong your lives. I appreciate the patience, support and prayers of my emerald, Hamdalat Opeyemi Abdulkareem and my princess, Safiyyah Imam-Tamim.

I appreciate my friends, Doctors Ismail Adua, A. O. Abdulkadir, A. B. Abdulkadir, O. A. Sambo, Saddam, Ibrahim Salawu, T. A. Abdurraheem and their families, Drs. Liadi Abiodun, Shafi'i Bello, Umar Alkali, Magaji Chiroma, Abdurashheed Lawan, and Awwal Magashi, Abdularazaq Sarumi, Harun Jaiyeoba, Yusuf Ali Omooba and others. You all taught me new dimensions of friendship. I also thank Mr. Kosemani & family. I also thank all the friends I met at IIUM for making the stay in Malaysia enjoyable. To the families of Dr. Abdulrazaq B. Nafiu, Bro. Yusuf Isiaka and Mr. Miftahudeen B. Tijani, I will forever appreciate you guys for opening your doors to me everytime I needed you. I also appreciate the companionship of Drs. Mrs. K. O. Akanbi, Murgan, Omoola Sodiq, Abdullahi Ishola and Mrs. Raji, Na'eem Balogun, Musty, Alafara, etc.

I will never forget the roles of Prof. A. A. Oba, Assoc. Prof. I. A. Yusuf, Dr. H. A. Ijaiya, Prof. M. M. Akanbi and Assoc. Prof. I. A. Abikan in developing my career and insisting that I should come to IIUM despite my personal inclination against it. Thank you all for the confidence you have always had in me. I also appreciate the prayers and encouragements from my kith and kin as well as colleagues (academic and non-academic) at the Faculty of Law, University of Ilorin, Nigeria. I especially



thank my former HOD, Dr, Hakeem Ijaiya, the current HOD, Dr. Kayode and Prof. R. K. Salman for your continued support even when I was not available to contribute to the department. I equally thank all my students especially Law Lord Adam, Waduudah Abdullateef, Abdulsalam Mansurat, etc. through whom I picked some of the ideas that culminated into writing this PhD thesis. You guys taught me more than you knew. I thank Assoc. Prof. N. M. Abdulraheem, R. O. Balogun Esq., Yusuf O. Ali & Co., and the Law Library of University of Ilorin for allowing me to access resources in their collections.

I also thank my bosses, K. K. Eleja SAN and Tunde Olomu SAN as well as all my teachers in University of Ilorin, Nigerian Law School and Obafemi Awolowo University who taught me the rudiments of legal advocacy and appreciation of legal issues and whose light of knowledge guided me in conducting independent research for this PhD. To all persons who contributed actively and passively to the success of this programme but who I cannot mention for space constraint, I say *jazaakumullahu khairan*. Similarly, I acknowledge the hardwork and friendliness of sisters Norhanieza bt A. Hamid, Norhamizan bt Abd. Hamid, and Lulu of the AIKOL Deputy Dean (Postgraduate) Office. I will forever appreciate you all. Thank you.

Finally, I acknowledge and thank all the authors and publishers, whose materials I used to write this thesis.

# TABLE OF CONTENTS

Abstract.....	ii
Abstract in Arabic.....	iii
Approval Page.....	iv
Declaration.....	v
Copyright Page.....	vi
Dedication.....	vii
Acknowledgements.....	viii
List of Figures.....	xv
List of Cases.....	xvi
List of Statutes.....	xxii
<b>CHAPTER ONE: GENERAL INTRODUCTION.....</b>	<b>1</b>
1.1 Introduction.....	1
1.2 Statement Of Problem.....	3
1.3 Research Questions.....	4
1.4 Objectives of the Thesis.....	4
1.5 Hypotheses.....	5
1.6 Scope and Limitations of the Study.....	5
1.7 Methodology.....	7
1.8 Literature Review.....	12
Evolution and Operation of the Pluralistic Family Law in Nigeria.....	13
Multi-Tiered Marriages under the Pluralistic Nigerian Family Law.....	17
Reasons for conducting Multi-Tiered Marriage.....	19
Legal Debates on the effect of Multi-Tiered Marriage.....	21
Issues and Implications of Multi-Tiered Marriages under Nigerian Family Law.....	25
Reforming the Nigerian Family Law.....	32
1.9 Summary of Chapters.....	37
<b>CHAPTER TWO: THE INSTITUTIONAL STRUCTURES AND THE SOURCES OF NIGERIAN FAMILY LAW.....</b>	<b>40</b>
2.1 Introduction.....	40
2.2 The Social and Institutional Structures of Nigerian Family Law.....	41
2.2.1 Political Structure.....	41
2.2.2 Socio-Cultural Structure.....	43
2.2.3 Judicial Structure.....	44
2.3 The Sources of Family Law in Nigeria.....	46
2.3.1 Customary Law.....	47

2.3.1.1 Pre-Colonial Nigerian Societies: Political Organisations and Structures .....	49
2.3.1.2 Position of Customary Law in Modern Nigerian Legal System .....	55
2.3.1.3 Application of Customary Law in Contemporary Nigerian Legal System .....	56
2.3.2 Islamic Law .....	59
2.3.2.1 The Position of <i>Shari'ah</i> viz-a-viz Customary Law under the Nigerian Legal System .....	60
2.3.2.2 Position of Islamic Law in Modern Nigerian Legal System.....	64
2.3.3 Statutory Laws .....	70
2.3.3.1 Constitution of the Federal Republic of Nigeria 1999 (CFRN) .....	70
2.3.3.2 Marriage Act.....	75
2.3.3.3 Matrimonial Causes Act .....	79
2.4 Conclusion .....	86

**CHAPTER THREE: LAWS AND PRACTICES OF MARRIAGE CONTRACTS UNDER THE CUSTOMARY LAW IN NIGERIA ..... 88**

3.1 Introduction.....	88
3.2 Contract of Marriage under the Customary Law .....	88
3.2.1 The Basic Requirements of Marriage Contract under Customary Law .....	89
3.2.1.1 The Preliminary Inquiry, Proposal and Betrothal.....	89
3.2.2 The Legal Requirements of Customary Law Marriage.....	93
3.2.2.1 Capacity to enter into Marriage Contract under Customary Law .....	94
3.2.2.1.1 Legal Capacity Requirements .....	95
3.2.2.1.2 Customary Capacity Requirements .....	104
3.2.2.2 Consent of the Parents and the Parties .....	107
3.2.2.3 Dowry/Bride Price.....	115
3.2.2.4 Bride Handing Over Ceremony.....	117
3.3 Conclusion .....	121

**CHAPTER FOUR: THE CELEBRATION OF ISLAMIC LAW MARRIAGE CONTRACT IN NIGERIA..... 122**

4.1 Introduction.....	122
4.2 Contract of Marriage under Islamic Law in Nigeria .....	123
4.2.1 Preliminary Legal Requirements of Marriage Contract under Islamic Law .....	126
4.2.1.1 Legal Capacity .....	126
4.2.1.2 Betrothal .....	140
4.2.2 Forms and Essential Elements of the Marriage Contract under Islamic Law .....	145
4.2.2.1 Contracting Parties ( <i>Al-Mahal</i> ) .....	145
4.2.2.2 Offer and Acceptance ( <i>Ijāb</i> and <i>Qubūl</i> ) .....	150
4.2.2.3 Marriage Guardian ( <i>Waliyy</i> ).....	157

4.2.2.4 Dower ( <i>Mahr</i> or <i>Ṣaddāq</i> ) .....	162
4.2.2.5 <i>Shahādah</i> (Witnesses) .....	173
4.3 Conclusion .....	175

**CHAPTER FIVE: LAWS AND PRACTICES OF MARRIAGE CONTRACTS UNDER THE STATUTES IN NIGERIA ..... 177**

5.1 Introduction.....	177
5.2 Contract of Marriage under the Statutes.....	178
5.2.1 Legal Requirements of statutory marriage in Nigeria.....	179
5.2.1.1 Capacity as regards the age of the parties .....	179
5.2.1.2 Consent .....	183
5.2.1.3 Prohibited degrees of blood and marriage relationship .....	190
5.2.1.4 Marital status of the parties .....	194
5.2.1.5 The parties must be male and female .....	197
5.2.2 Legal Procedures for celebration of statutory marriage in Nigeria.....	200
5.2.2.1 Fifteen days residence of the parties .....	201
5.2.2.2 Giving of notice of intention to marry.....	201
5.2.2.3 Issuance of Registrar’s Certificate.....	206
5.2.2.4 Place of celebration of the marriage .....	209
5.2.3 Effect of non-compliance with the preliminaries and requirements .....	214
5.3 Conclusion .....	223

**CHAPTER SIX: MULTI-TIERED MARRIAGE CONTRACT: ITS NATURE, CAUSES AND LEGAL EFFECTS UNDER NIGERIAN FAMILY LAW..... 225**

6.1 Introduction.....	225
6.2 Concept and nature of multi-tiered marriage contracts .....	225
6.3 Causes of multi-tiered marriage contracts in Nigeria.....	231
6.3.1 Legal Causes .....	231
6.3.1.1 Importation and reception of Non-indigenous laws .....	232
6.3.1.2 Legal Centralism .....	236
6.3.1.3 Insecurity from the application of the rules of Customary Law .....	242
6.3.2 Social Causes .....	243
6.3.2.1 Difference of marriage cultures under the different systems of marriage .....	243
6.3.2.2 Societal Norm Factor.....	245
6.3.2.3 Parental Influence Factor.....	247
6.3.2.4 Educational Advancement and Social Enlightenment .....	248
6.4 The Legal Status of a statutory marriage that is preceded by Customary or Islamic Law Marriage .....	249
6.4.1 Conversion Theory.....	250
6.4.2 Coexistence Theory.....	255
6.4.3 “First In Time” Theory.....	258
6.4.4 Critique of the theories of Conversion, Coexistence and First in Time .....	261
6.4.5 Proposing “manner of life” theory as alternative.....	265

6.5 Conclusion .....	268
<b>CHAPTER SEVEN: IMPLICATIONS OF MULTI-TIERED MARRIAGE CONTRACTS FOR NIGERIAN FAMILY LAW .....</b>	<b>270</b>
7.1 Introduction.....	270
7.2 Implications of multi-tiered marriage contract .....	270
7.2.1 Indeterminacy of applicable law (internal conflict).....	273
7.2.2 Uncertainty of court with jurisdiction .....	288
7.2.3 Redundancy of the Marriage Act provision against bigamy.....	291
7.3 Conclusion .....	296
<b>CHAPTER EIGHT: REFORMATION OF NIGERIAN FAMILY LAW .....</b>	<b>298</b>
8.1 Introduction.....	298
8.2 Law Reform and the Nigerian Family Law .....	298
8.2.1 Suggested models for reform of Nigerian Family Law .....	300
8.2.1.1 Unification/Harmonisation .....	300
8.2.1.2 Legal Pluralism.....	302
8.2.2 The necessity of the recognition of Strong Legal Pluralism for the reform of Nigerian Family Law .....	308
8.2.3 Suggested methods of reform of Nigerian Family Law.....	317
8.2.3.1 Restatement and Codification.....	317
8.3 The Pragmatic Approach to reform of Nigerian Family Law .....	322
8.3.1 General Processes of the Reform .....	322
8.3.2 Specific Practical Methods of the Reform .....	327
8.3.2.1 Restatement of the rules of Customary Law marriage .....	327
8.3.2.2 Codification of Islamic Law marriage.....	331
8.3.2.3 Amendment of the Marriage Act.....	337
8.4 Nigerian Law Reform Commission and the reform of Nigerian Family Law .....	342
8.4.1 The reasons for the failure of the NLRC reform of the Nigerian Family Law .....	345
8.4.1.1 Legislative Bureaucracy .....	345
8.4.1.2 Lack of infrastructural resources .....	347
8.4.1.3 Adoption of unsuitable methodology for the reform exercise .....	348
8.4.1.4 Choice of unsuitable model .....	349
8.4.1.5 Lack of a national policy on the family.....	351
8.5 Nigerian Federalism and the pragmatism of the reform of Nigerian Family Law .....	351
8.6 Role of courts in reform of Nigerian Family Law .....	357
8.7 Conclusion .....	359
<b>CHAPTER NINE: SUMMARY, FINDINGS AND RECOMMENDATIONS ..</b>	<b>361</b>
9.1 Introduction.....	361
9.2 Summary of findings of the Research .....	362
9.2.1 Plurality of marriage systems in Nigeria.....	362
9.2.2 Relegated status of Customary and Islamic Laws .....	363
9.2.3 Inadequacies in the application of rules of marriage under the different systems .....	364

9.2.4 Growing trend of multi-tiered marriage in Nigeria.....	366
9.2.5 Causes of the multi-tiered marriage .....	367
9.2.6 The better approach to resolve the legal effect of section 33 (1) of Marriage Act.....	369
9.2.7 Unravelling the potential and existing legal problems of Multi-Tiered Marriage .....	370
9.2.8 The need for the reform of Nigerian Family Law.....	370
9.2.9 Earlier attempts by Nigerian Law Reform Commission.....	371
9.2.10 Challenges to reform of Nigerian Family Law .....	372
9.3 Recommendations.....	372
9.3.1 Adoption of the Strong Legal Pluralism model in Nigeria .....	372
9.3.2 Proposing the ‘Pragmatic Approach’ process for the reform of Nigerian Family Law .....	373
9.3.2.1 The General Processes of the Reform .....	373
9.3.2.2 The Specific Practical Process of the Reform .....	374
9.3.3 Proposing the “Manner of Life” Theory as an alternative to the “First in Time” Theory.....	375
9.3.4 Reform of the Nigerian legal education curriculum .....	376
9.3.5 Refresher courses for judges .....	377
9.4 Suggestions for future research .....	378
<b>REFERENCES.....</b>	<b>380</b>

## LIST OF FIGURES

<u>Figure No</u>	<u>Page No</u>
8.1 Diagrammatic representation of the description of legal pluralism in weak sense	308
8.2 Diagrammatic representation of the description of legal pluralism in the strong sense	310
8.3 The pragmatic model for the reform of Nigerian Family Law	345

## LIST OF CASES

### Nigerian

- A. Bolatito v B. Albert* Unreported, Suit No. UB/21/60 delivered at the Grade ‘B’ Customary Court, Ilesha.
- A. G. Lagos State v A. G. Federation & 36 Ors.*, vol. 3 CLC 66 at p. 102.
- A. G. Ogun State v Aberuagba* [1985] 1 NWLR (pt. 3) 395.
- Abdulkadir v Abdulkadir* (2011) Kwara State Shariah Court of Appeal Annual Report, 220.
- Abioye v Abioye*, Customary Court, Itire – Lagos, in *Lagos Weekend*, 19 May 1989.
- Adama Gidado v. Musa Mohammed Yola*, CA/J/21s/91 (unreported) delivered by the Shari‘ah panel of the Court of Appeal, Jos Division, per Uthman Mohammed, PJ (as he then was) 33-34.
- Adegbola v Folaranmi* (1921) 3 N.L.R. 89
- Adeleke v Yinka* (unreported) Suit No. M/559 /76 of 5/11/76 delivered by the Customary Court, Mapo, Ibadan.
- Adeniyi Olowu & others v Olabowale Olowu* (1985) 3 NWLR (pt. 13) 372
- Adeoye v Adeoye* (1962) N.M.L.R. 63.
- Adesubokan v Yinusa* (1973) 3 UILR 22; (1971) NNLR 77.
- Adeyemi v Adeyemi* (1962) L.L.R. 70; (1969) 2 All NLR 161.
- Adisatu Awero v Olajide Ishola*, Case No: B/229/62 (unreported) delivered at Grade ‘B’ Customary Court, Egba, Odeda.
- Afonne v Afonne* (1975) ECSNLR 159 at 168-169.
- Agbai v Okagbue* (1991) 7 NWLR (pt. 204) 391, 417.
- Agbeja v Agbeja* (1985) 3 NWLR (pt 11) 11 at 19 and 24.
- Agbeke v Salawu Iyanda* (Unreported) Suit No: 5/58 of the Oyo Native Court of Appeal.
- Agbo v Udo* (1947) 18 N.L.R. 152.
- Agu v Agu* (unreported) Suit No. E/5D/70 of High Court of Enugu delivered on 27 September 1971.
- Ajayi v White* (1946) 18 N.L.R. 41.
- Ajih v Ajih* (1975) ECSNLR, 6 at 10.
- Akparanta v Akparanta* (1972) 2 E.C.S.N.L.R. 779.
- Akwudike v Akwudike* (1963) 7 ENLR, 5.
- Alhaji Isa Bida vs. Baiwa the daughter of Alhaji Isa Bida*, Appeal No. SCA/NWS/CV/47/70 delivered on the 19th March, 1971.
- Angu v Attah*, P.C. 1874 – 1928, 43.
- Anyaegbunam v Anyaegbunam* (1973) 4 SC 121.
- Aremu v S. Anike* Case No. B71/62 (unreported) Grade ‘B’ Customary Court, Abeokuta.
- Asiata v Goncallo* (1900) 1-2 N.L.R. 42.
- Attorney-General v Egbuna* (1945) 18 NLR 1
- Awobokun v Awobokun* (1970) 1 All NLR 308.
- Ayegba v Ajunwa*, (Unreported) suit No. MD/3504/77 delivered on 1 February 1980 by the High Court of Makurdi.



*Bailey v Bailey*, Lagos Customary Court, in *Lagos Weekend*, 7 July 1989.

*Bakare v Afolabi* Suit No. ID/442/83 of 28 February 1989 (unreported) delivered by the Lagos High Court.

*Balogun v Balogun*, Agege Grade A Customary Court, in *Lagos Weekend*, 21 July 1989.

*Beckley v Abiodun* (1943) 17 NLR 59;

*Bida v Bida* (June 1980) Shariah Law Reports, 38.

*Buraimo v Bamgboye* (1940) 15 NLR 139.

*Chawere v Ahenu & 1 other* (1935) 12 N.L.R. 126.

*Coker v Coker* (1943) 17 N.L.R. 55

*Cole v Cole* (1898) 1 N.L.R. 15.

*Cole v. Akinyele* (1960) 5 F.S.C. 84 at 86; [1960] SCNLR 192.

*Craig v Craig* (1964) LLR 96.

*Danmole v. Dawodu* (1958) 3 FSC 46; [1962]1 WLR 1053.

*Dura Aonde v Yomekaa Agoii* Suit No: GBB/32A/1981 (unreported) delivered at the Benue State High Court.

*Edet v Essien* (1932) 11 NLR 47.

*Egri v Egri* [1974] ECSLR 632 at 634.

*Egunjobi v Egunjobi* (1974) ECSNLR 52; (1976) 2 FNLR 78.

*Ejebaokhio v Ejimiangbon Daudu* (unreported) Suit No. U/25/70 judgment delivered by the High Court of Midwestern State on 4 July 1974.

*Ejikeme v Ejikeme* (Unreported) Suit No. E/10D/71 of the Enugu High Court delivered on 31 July 1972.

*Emeakuana v Umeojiako*, Suit No. AA/IA/76 (unreported) delivered at the High Court, Awka on 15 October 1976.

*Ernest Nzekwu v Christiana Nzekwu* (1989) NWLR (Pt.104)373; (1989) 5 iLAW/SC.227/1985.

*Ettarh v Ettarh* (unreported) LD/23/1963.

*Fatimo Igboo & Anor v. Baba Ogun* (1997) Sharia Court Of Appeal Annual Report, 133 at 136-137.

*Folashade v Ibitayo* Suit No: UBD. 205/60 decided at the Ilesha Customary Court Grade 'B'

*Fowler v Martins* (1924) 5 N.L.R. 45

*Gafai v UAC* (1962) N.N.L.R. 73

*Godwin v Crowther* (1934) 2 W.A.C.A. 109.

*Gooding v Martins* (1942) 8 WACA 108

*Haastrup v Coker* (1927) 8 N.L.R. 68.

*Halima Tswayan v Tsawayan Mamudu* (2012) Kwara State Shariah Court of Appeal Annual Reports, 10-11.

*Ibrahim v Ojoma* (2004) 4 NWLR (pt. 862) 89.

*Idrisu Ibrahim v Ndamakun Mama Jiya* (2011) Kwara State Shariah Court of Appeal Annual Reports, 284 – 299.

*Ifezue v Mbadugha* (1984) 5 NILR 18.

*Ikedionwu v Okafor* (1966-67) 10 ENLR 178.

*Ikpi v Ikpi* (unreported) Suit No. HD/88/83 of the High Court of Lagos delivered on 13 April 1983.

*In the matter of the intended marriage between Samson Omofowa and Miss Adiza Momoh (In Re Chief Ghafe II)* (unreported) Suit No. M/1/68 of Ubiaja High Court on 23 February 1968.

*Indo Alhaji Ibrahim v Danladi Ali* (1970) The Shariah Court of Appeal of Plateau/Borno State Law Report, 13.

*Jadesimi v Okotie-Eboh* (1996) 2 N.W.L.R. 128

*Jimoh Adigun v. Awawu Ajika & Oba Owolabi* (1995) Sharia Court of Appeal Kwara State Annual Report, 17 at 25.

*Joseph Olawuyi (Caveator) v Adegoke and Adegboyega (Respondents)* (unreported) Suit No. Hoy/24/27 of the High Court of Western State on 27 May 1974 delivered by Craig, J.

*Judith Kpadoo Jibrin v Hoomsuk Alex Jibrin* (Unreported) Suit No: FCT/HC/PET/147/2010 delivered on 28/3/2011 by Honourable Justice O.C. Agbaza. Retrieved August 2, 2014 from [http://fcthighcourtelibrary.com/decisions/?wpfb\\_dl=2841](http://fcthighcourtelibrary.com/decisions/?wpfb_dl=2841)

*Karimatu Yakubu & Anor. v Alhaji Yakubu Tafida Paiko & Anor* CA/K/80s/85 (Unreported) delivered on 11/12/1985 by the Shariah panel of the Court Appeal, Kaduna Judicial Division.

*Khairie Zaidan v Fatimah Khalil Mohssen* (1973) 11 SC 1

*Kuforiji v Kuforiji & Jegede* (1970) NMLR 30.

*Kwara State Polytechnic v Afolabi* [2010] All FWLR (pt. 547) 629 at 653-658

*Laoye & Ors. v Oyetunde* (1944) A.C. 170.

*Lawani v Osu and Adeyi* (1888) S.C.C.L.R., 3.

*Lewis v Bankole* (1909) 1 NLR 100-101

*Loye v Loye* (1981) OYSHCLR 140.

*M & B Electrical Co. Ltd. v Govt., Cross River State* (2005) All FWLR (pt. 284) 350 at 365-370

*Machi v Machi* (1960) L.L.R. 103.

*Maraizu v Maraizu* (1973) E.C.S.N.L.R. 671.

*Martins v Adenugba* (1946) 18 N.L.R. 63.

*Martins v Fowler* [1926] A.C. 746 (P.C.)

*Mbonu v Mbonu* (1976) F.N.L.R. 57 at 63.

*Medinat & Alamoyo v Jamiu Adam* (2011) Kwara State Shariah Court of Appeal Annual Reports, 260.

*Mojekwu v Ejikeme* [2000] 5 NWLR 402.

*Moses Sofela v Moriamo Sodipo* (Unreported) Suit No. B. 13/62 of the Abeokuta Customary Court Grade 'B' 2.

*Muhammad Abubakar v Hadizah Muhammad & Ibrahim Ndagali Chakyagi* (unreported) Suit No. KWA/SCA/CV/AP/24/91 delivered by the Kwara State Shariah Court of Appeal.

*Mulikatu Abake v Rasidi Atanda*, Case No. 113/60 (unreported) decided at Grade 'A' Customary Court, Abeokuta

*Ndana v Ndana & Anor.* (2011) Kwara State Shariah Court of Appeal Annual Report, 7 – 9.

*Nigerian Tobacco Co. Ltd v Alloysius Olumba Agunanne* (1995) 5 NWLR (pt 397) 541 at 580-581.

*Nnodim v Nnodim* (unreported) Suit No. HOW/29/64 of the Owerri High Court delivered on 2 August 1967.

*Nsirim v Nsirim* [1995] 9 NWLR (pt 418) 144 at 167-168.

*Nwokedi v Nwokedi* (1954) L.L.R., 94.

*Obele v Obele and Another* (1973) NMLR 155 at 156.

*Obiekwe v Obiekwe* (1963) 7 E.N.L.R. 196.

*Odiase v Odiase* (1965) N.M.L.R. 196.  
*Odiva v Nweke Obor and Anor.* (1973) ECSNLR 733 at 735.  
*Ogunremi v Ogunremi* (1972) 2 UILR 466.  
*Ohochuku v Ohochuku* (1960) 1 WLR 183; (1960) 1 All E.R. 253.  
*Ojetunde v Adedapo* (unreported) Suit No. M/39/12 of High Court of Western State delivered in 1971.  
*Ojisua v Aiyebilehin* (2001) FWLR (pt. 66) 710 at 719-720.  
*Ojokolobo v. Alamu* (1987) 3 NWLR (pt. 61) 37.  
*Okaludo v Omma* (1961) WNLR 149.  
*Oke Lanipekun Laoye & ors. v. Amao* (1944) Law Reports Appeal Cases, 170 at 172-173.  
*Okon v Administrator-General (Cross River State)* (1992) 6 NWLR (pt. 248) 473.  
*Okonkwo v Eze* (1960) N.M.L.R. 80.  
*Okonkwo v Okagbue* (1994) 9 NWLR (pt. 368) 301.  
*Okpanum v Okpanum* (1972) E.C.S.N.L.R. 561.  
*Olawuyi v Olawuyi* (unreported) Suit No. Hoy/24/27 of High Court of Western State delivered on 27 May 1974.  
*Olikagbue v Olikagbue* (unreported) Suit No. M/17/66 of the Benin High Court delivered on 22 September 1966.  
*Oloko v Oloko* (1959-61) WNLR.  
*Olu-Ibukun v Olu-Ibukun* [1974] ECCLR 706.  
*Olusoga v Olusoga* HD/25/1963.  
*Oluwasegun v Oluwasegun*, Lagos Customary Court, in *Lagos Weekend*, 16 June 1989.  
*Onwuchekwa v Onwuchekwa* (1991) 5 NWLR (pt. 194) 739.  
*Onwudinjo v Onwudinjo* (1957) 11 E.R.L.R. 1; (1963) ALL NLR 235.  
*Osamwonyi v Osamwonyi* (1972) 10 SC 1; [1973] 1 NMLR 25; [1972] 1 All NLR 356.  
*Oseni v Oseni and Shodiya* (1972) 12 CCHCJ 110.  
*Oshodi v Oshodi* (1963) 2 All NLR 214.  
*Owonikoko v Arowosaye* (1997) 10 N.W.L.R. (Pt. 523) 1 at 15  
*Owonyin v Omotosho* (1961) 1 All NLR 304.  
*Oyebola v Obenleowo*, (Unreported) AB/9A/63 delivered by the Western Region High Court, Charles, J.  
*R. v. Bartholomew Princewell* Vol. 8, No. 1 (1964) Journal of African Law 36-40; (1963) NNLR 54.  
*Ramatu Baba v Alh. Mustafa Alamu* (1994) Kwara State Sharia Court of Appeal Annual Report, 31 at 39-41.  
*Re Grace Spencer Caveatrix* (1964) 2 All NLR 171.  
*Smith v Smith* (1924) 5 N.L.R. 105.  
*Solomon v Gbobo* (1974) ECSNLR 457.  
*Tabik Investment Ltd. & Anor. v. GTB Plc.* (2011) 4 CLRN 19.  
*Taylor v Taylor* (1935) 2 W.A.C.A. 348.  
The Nigerian Army v Lt. Patrick Dodo [2012] 6 SCNJ. Retrieved November 23, 2013 from <http://nigeriansupremecourtreports.wordpress.com/2012/08/16/the-nigerian-army-v-lt-patrick-dodo-2012-6-scnj-sc-2902009-synopsis-of-a-judgment-of-the-nigerian-supreme-court-delivered-in-june-2012-reported-by-kodi-azuonye-esq-attorney-at-law/>  
*Thompson Oke & Anor. v Robinson Oke & Anor* (1974) 1 All NLR (pt. 1) 443.

*Udom v Udom* (1962) L.L.R. 112.  
*Ugo v Obiekwe* (1989) 1 NWLR 566 at 583-584  
*Ukperi v Ukperi* (unreported) Suit No. UHC/13A/70 judgment delivered by the Midwestern State High Court on 29 December 1970.  
*United Bank For Africa Plc v BTL Industries Limited* [2005] 10 NWLR (Pt. 933) 356.  
*Vermeire v. Belgium*, Application No. 12849/8, Judgement of 29 November 1991.  
*Zeinabu Iya Aziza v Abdul Saheed Lateef* (2011) Kwara State Shariah Court Annual Report, 310.

### **United Kingdom**

*Balfour v Balfour* [1919] 2 KB 571.  
*Durham v Durham* (1885) 10 PD 80 at 82.  
*Erie Railroad Co. v Tompkins* 304 U.S. 64, 79 (1938).  
*Harrod v Harrod* (1854) 1 K&J, 4; (1854) 69 ER, 344.  
*Hyde v Hyde* (1866) LR 1 P&D 130.  
*Hyman v Hyman* [1929] AC 601.  
*Lynch v Knight* (1861) 9 HL Cas 577 at 589.  
*Mark v Mark* FD00D12215.  
*Mikail Kemi Oyekunle v Secretary of State for the Home Department*, Appeal Number: IA/27906/2012 (unreported) determined on 21 June 2013 by the Upper Tribunal (Immigration and Asylum Chamber) before Lord David Burns and Upper Tribunal Judge Rintoul.  
*Morufu Adekunle Igbede v Secretary of State for the Home Department*, Appeal Number: IA/10669/2012 (unreported) determined on 20th June 2013 by the Upper Tribunal (Immigration and Asylum Chamber) before Mr C.M.G. Ockelton, VP, Upper Tribunal Judge McKee and Deputy Upper Tribunal Judge McCarthy.  
*Sheffield City Council v E* [2004] EWHC 2808.  
*R v Jackson* [1891] 1 QB 671, CA.  
*R v R* (rape: marital exemption) (1992) 1 AC 599.  
*R v Reid* [1973] QB 299, CA  
*R. v Lister* (1721) 1 Stra 478.  
*Re Cochrane* (1840) 8 Dowl 630.  
*Thynne v Thynne* [1955] P. 272.  
*Udeze-Nwannia v Udeze-Nwannia* [2013] EWCA Civ 725.

### **Malaysian**

*Mansjur v Kamariah* [1988] 3 MLJ xlv.  
*Noraini Mokhtar v Abd Halim Samat* [2005] 1 CLJ (Sya) 21.  
*Tengku Anun Zaharah v Dato Dr. Hussein* (1980) 3 JH 125.  
*Zainuddin v Anita* (1983) 4 JH 73.

### **Other Jurisdictions**

*Black & White Taxicab Co. v Brown & Yellow Taxicab Co.* 276 U.S. 518, 533-534 (1928).  
*Coleman v Shang* (1961) A.C. 481.  
*G. B. Ollivant v C. A. Vanderpuye* [1934-35] 2 WACA 368 at 570.

*Kalthom v Nordin* (1990) 9 JH 178.  
*Olmstead v United States*, 277 US 438 478.  
*R v Amokeyo* (1917) 7 E.A.L.R. 14  
*Re Isaac Annetifi* (1889) Red. 157.  
*Setse v Setse* (1959) GLR 155.

## LIST OF STATUTES

### International Instruments

African Convention on the Rights and Welfare of Children. OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

Convention on Rights and Duties of States (Inter American), 49 Stat. 3097; Treaty Series 881, (*Signed at Montevideo December 26, 1933; Entered into force December 26, 1934*).

Convention on the Eradication of all forms of Discrimination Against Women, signed at New York, entered into force on December 18, 1979.

### Nigerian Local Legislation

1980 Draft Marriage Bill.

Abolition of Osu System Law 1956, Cap.1, Laws of Eastern Region of Nigeria 1947.

Age of Marriage Law of 1956, Cap. 6, Laws of Eastern Nigeria, 1963.

Area Court Law of Kwara State, Cap. A9, Laws of Kwara State 2006.

Births, Deaths, Etc. (Compulsory Registration) Act 1992.

Child Rights Act 2003

Constitution of the Federal Republic of Nigeria 1999, Cap. C3, Laws of the Federation of Nigeria 2004

Constitution of the Federal Republic of Nigeria, 1979.

Criminal Code Act

Criminal Code, Cap C38, LFN 2004.

Cross River Age of Customary Marriage Law, 1956.

Cross River Limitation of Dowry Law, 1956.

Cross River State High Court Law

Cross River State Law on prohibition of Girl-Child Marriage 2000.

Customary Court Edict of Imo State, 1984,

Customary Court Law of Edo State, 1984.

Customary Law, Cap 41, Laws of Oyo State, 2002.

Decree No. 18 of 1970.

Draft Marriage Bill 2005.

Evidence Act 2011, Cap. E14, Laws of the Federation of Nigeria 2004.

Former Bendel State Customary Courts Edict, 1984

High Court Law of Delta State

High Court Law of Lagos State

Interpretation Act, Cap. I.3, Laws of the Federation of Nigeria, 2004.

Katsina State High Court Law of 1991

Legal Notice No. 1 of 1955.

Legal Notice No. 1 of 1958.

Legal Notice No. 131 of 1954.

Legitimacy Act 1929, Laws of the Federation of Nigeria 2004.

Marriage Act (Amendment) Act 1971.

Marriage Act, Cap. M6, Laws of the Federation of Nigeria 2004

Marriage Ordinance No. 18 of 1914.

Marriage Ordinance, Cap 115, Laws of the Federation of Nigeria 1958  
 Marriage Proclamation No. 1 of 1907 of the Northern Protectorate.  
 Marriage Proclamation No. 20 of 1900 of Southern Protectorate.  
 Married Women's Property Act 1882  
 Matrimonial Causes Act 1970, Cap M7 LFN 2004.  
 Matrimonial Causes Act, 1970, Cap. M7, Laws of the Federation of Nigeria 2004.  
 Matrimonial Causes Act, Cap. M7, LFN 2004.  
 Matrimonial Causes Rules 1980  
 Native Authority (Declaration of Biu Native Marriage Law and Custom) Order 1964.  
 Native Authority (Declaration of Borgu Native Marriage Law and Custom) Order 1961.  
 Native Authority (Declaration of Idoma Native Marriage Law and Custom) Order 1959  
 Native Authority (Declaration of Tiv Native Marriage Law and Custom) Order 1955  
 Native Courts Law of the Northern Region, Ordinance No. 6 of 1956.  
 Native Courts Ordinance 1914  
 Native Courts Ordinance No. 6 of 1956.  
 National Institute of Cultural Orientation Act, Act 93 of 1993.  
 Nigerian Law Reform Commission Act (Amendment) Bill, 2012  
 Ordinance No. 10 of 1863.  
 Ordinance No. 14 of 1884.  
 Ordinance No. 18 of 1916.  
 Ordinance No. 23 of 1922  
 Ordinance No. 58 of 1933.  
 Ordinance No. 6 of 1863  
 Penal Code Law, Law of Northern Nigeria 1958.  
 Same Sex Marriage (Prohibition) Act 2013.  
 Sharia Court of Appeal Law, Cap.S4 Laws of Kwara State 2006.  
 Shari'ah Court of Appeal Law, Cap. 122, Laws of Northern Nigeria, 1963  
 Statutory Instrument (S.I.) 44 of 1983.  
 Supreme Court Ordinance No. 6 of 1914  
 Supreme Court Ordinances of 1900.  
 Supreme Court Proclamation No. 6 of 1900.  
 The Ordinance No. 3 of 1963.  
 Western Region Marriage, Divorce and Custody of Children Adoptive Bye-Laws Order, 1958.

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 INTRODUCTION

In every community, the law relating to the family commands great attention and importance because the family is the base of the community and is therefore vital to its continued existence.<sup>1</sup> In many societies particularly in Nigeria, marriage is regarded as a prominent prerequisite for the establishment of a legitimate family. However, where a country is inhabited by people of different cultures and religions, it will also witness application of different systems of law<sup>2</sup> pertaining to their respective customs and this reflects mostly in the forms of their ceremonies including marriage. Nigeria is among such countries.<sup>3</sup>

Nigerian family law recognises three systems of marriage, that is, marriage under customary law, Islamic law and statutory law. The principles and legal rules applicable to each type of marriage are succinctly different. But due to the transplantation<sup>4</sup> and reception of the English common law rules as the general law governing the citizens as against their respective customary laws and Islamic law which directly apply to their domestic lives, it has become a practice for the citizens to engage in multi-tiered marriage contracts. This is a type of marriage that is based on legal principles that overlap the variant systems of marriages recognised under the family law; or in some other instances, that reflect twisted forms of the particular

---

<sup>1</sup> Nwogugu, E. I., *Family Law in Nigeria* (Lagos: Heinemann Educational Books, 2006), xviii.

<sup>2</sup> Agbede, I. O., *Themes on Conflict of Laws*, (Lagos: Shaneson C.I. Ltd., 1989), 6 – 7.

<sup>3</sup> In Nigeria, about half of the population is Muslim, followed by a large percentage of Christian, and a minority population of traditional religious practitioners and atheists.: A. A. An-Na'im, (ed.), *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books Ltd., 2002), 299.

<sup>4</sup> See generally Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2<sup>nd</sup> Ed. (Georgia: University of Georgia Press, 1974).