



Legal Resources  
Foundation

# **MARRIAGE**

**and**

# **THE LAW**

**Know Your Rights**

## About this Pamphlet

### Marriage and the Law

This booklet is for people who are planning to marry. It explains the advantages and disadvantages of different types of marriages in Zimbabwe.

People who are already married may also find this information helpful, if they are not sure what kind of marriage they have and how it affects them and their children.

The four chapters dealt with:

1. Marriages under the Marriage Act [*Chapter 5:11*] (sometimes called Civil or Christian marriage).
2. Marriage under the Customary Marriages Act [*Chapter 5:07*] (sometimes called a Registered Customary Marriage).
3. An unregistered customary law union (sometimes called an Unregistered Customary Marriage).
4. Living together (this includes a man and a woman who are sexual partners who live together).

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**THE MARRIAGE  
ACT  
(CIVIL)**

The husband can have only one wife

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## RESTRICTIONS

### Who can and cannot have this kind of marriage

- **AGE** You must be 18 years old or older. No person under the age of 18 can get married and it is illegal to marry someone who is under the age of 18 as that person is considered a child.
- **RELATIONSHIP** You cannot marry your child, grandchild, niece, nephew, brother or sister. You cannot marry your ex-husband or ex-wife's child, grandchild or parent, even if they are not related to you by blood (e.g. a step-child).
- **TWO PEOPLE** Only an unmarried man and unmarried woman can marry. You must be single, divorced, a widow or a widower. You can only marry one person, and must end this marriage if you want to marry someone else.
- **CONSENT** You must both want to be married to each other. You alone must decide that you want to be married. No other person can make this decision for you.

## FORMALITIES

### What you must do to have this marriage

- **BEFORE THE MARRIAGE** You must do one of the following:
  1. Get a licence by applying to the clerk of the civil court at the magistrates court; or
  2. Publish banns in a church. The priest or pastor on consecutive weekly services publishes the names of the couple who are to be married; or he may post the banns on a notice board for three weeks before the marriage; or

3. Publish a notice of intention to marry by applying to the clerk of the civil court at the magistrates court. The notice must appear for 15 days before the marriage.

Any person who objects to the marriage may give his reasons for objecting to the magistrate or minister of religion.

- **WHO MUST BE PRESENT AT THE CEREMONY**
  1. Bride and groom.
  2. Marriage officer (magistrate or registered minister of religion).
  3. Two witnesses (18 years old or older).
- **CEREMONY** Can take place anywhere and at any time.
- **CERTIFICATE** The marriage officer records the marriage in his register and issues two duplicate original marriage certificates. The register and the certificates are signed by the marriage officer, the parties to the marriage and the witnesses. One of the certificates is given to the married couple. This is not the same as a church blessing.

## PROPERTY CONSEQUENCES

### Who owns what during the marriage and after it ends

- **DURING THE MARRIAGE**

The immovable property (e.g. a house or a farm) can be registered in the man's or the woman's name or jointly.

Movable property (e.g. furniture) which is not registered is by law owned separately, but often it is difficult to say who owns what.

- **INHERITANCE**      If either spouse dies without leaving a will, the surviving spouse and the children share the property in portions determined by law.  
  
The law used to say that two Africans marrying under civil law were ruled by customary law for the purpose of inheritance, but this has been changed.
- **DIVORCE**      The court will decide who should get what property when making a divorce settlement: it will consider how long the marriage lasted, what each person contributed to the marriage, and how they will live after the divorce. Immovable property registered in one spouse's name could be given to the other.

## **SEXUAL RELATIONS**

- **DUTIES**      A married couple has the right under the law to engage in conjugal (sexual) relations. But no obligation can be forced by any court. A woman has no duty to engage in sexual relations whenever her husband demands it. If a husband forces his wife to have sex, he can be charged with rape.
- **ADULTERY**      The law creates a bond between the two people which must not be broken by others. Any person entering into a sexual relationship with either spouse can be sued by the other spouse for adultery.

## CHILDREN UNDER 18

### Who must support the children? What right each parent has to the children?

- **GUARDIANSHIP**      The guardian acts on behalf of the child in all legal matters, e.g. operating a bank account.  
  
Either the wife or the husband can act as the guardian of the children. No guardian is permitted to marry off a child who is under the age of 18. One can be arrested for marrying a child who is under the age of 18 years.  
  
If the parents divorce, both parents can act as guardians and must consult each other on major decisions.  
  
According to the Constitution of Zimbabwe a wife or mother has the same rights of guardianship with the father over a child.  
  
If one of the parents dies the other surviving parent will continue exercising the right of guardianship on his or her own children.
- **CUSTODY**            The custodian is the person who looks after and brings up the children. The custodian makes everyday decisions about the children's lives.  
  
The husband and wife share custody of their children while they live together.  
  
If the couple divorces, the court will decide who should have custody, based on the best interests of the child. If the couple separates before the divorce, the wife has sole custody while waiting for the divorce. If the husband wants custody before the divorce, he will have to apply



to a court, which will decide what is in the best interest of the child.

- **MAINTENANCE** Both husband and wife must maintain children under 18, and those over 18 who still need support, during the marriage and after divorce. A court can decide how much each person must pay. This depends on the resources of each parent and what each child needs.
- **LEGAL STATUS** All children born or conceived during a marriage are recognized by the law as the husband's children, unless he can prove they are not. He is therefore responsible for their maintenance.

## **MAINTENANCE OF SPOUSES**

### **What financial support a man or woman can get during the marriage and after it ends**

- **DURING THE MARRIAGE** The husband and wife must both maintain each other.
- **AFTER DIVORCE** A court can order a man to pay maintenance to his ex-wife. A court can also order a woman to pay maintenance to her ex-husband.

## DIVORCE

### How you can end the marriage

- **GROUND**

1. Irretrievable breakdown of the marriage. This means that there is no hope for the marriage to work in the future.

Examples of situations showing irretrievable breakdown are:

- separation for at least 12 months
- adultery which is not agreed to by the innocent spouse
- a sentence of 15 years' imprisonment or more
- cruelty or habitual drunkenness.

2. Incurable mental illness for at least 6 months or continuous unconsciousness for at least 5 years out of the last 10 of either the man or woman.

- **COURT**

You can only be divorced by the High Court. A person applying for a divorce in the High Court should also apply for orders for the maintenance and custody of the children and a division of the property. In some circumstances there may also be an order for maintenance of the ex-spouse.

# **THE CUSTOMARY MARRIAGES ACT**

The husband can marry more than one wife

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## RESTRICTIONS

### Who can and cannot have this kind of marriage

- **AGE**                      The Legal restriction for this type of marriage is 18 years. It is a crime to promise a girl under the age of 18 years as a wife of someone. To marry in terms of this marriage you must be aged at least 18 years and this applies to both men and women. It is a crime to allow someone under 18 years to get married.
- **RELATIONSHIP**                      There are different rules amongst different tribes or groups. In general, people cannot marry any blood relative, even third or fourth cousins.  
  
A brother can marry his dead brother's wife or wives (except the eldest brother who cannot).
- **TWO PEOPLE**                      Only two Africans can marry by customary law. This includes Africans from surrounding countries who wish to marry under Zimbabwean custom.  
  
A man who is married under customary law may marry another wife, but must inform the new wife that he is already married.
- **LOBOLO**                      The law does not require the payment of lobolo. But if the families agree that lobolo should be paid, then it is a contract and can be enforced.
- **CONSENT**                      If a woman is 18 years old or older she can agree to marriage by herself. She does not need a guardian's consent. If a woman is under 18 years old she cannot get married as it is illegal to marry anyone aged under 18 years.

## FORMALITIES

### What you must do to have this marriage

- **BEFORE THE MARRIAGE** You may be required to publish a notice of intention to marry at the customary law division of the magistrates court.
- **WHO MUST BE PRESENT AT THE CEREMONY?**
  1. Bride and groom.
  2. Customary marriage officer.
  3. No woman or man aged under 18 years can get married
  4. A witness approved by the marriage officer.
- **CEREMONY** Generally at the customary law division of the magistrates court during business hours. The marriage officer makes the marriage legal by saying to the man and woman, “declare you man and wife”.
- **CERTIFICATE** The marriage officer records the marriage in the register and signs. A duplicate of the register entry must be made and signed by the marriage officer, and given to the woman.

## PROPERTY CONSEQUENCES

### Who owns what during the marriage and after it ends

- **DURING THE MARRIAGE** Traditionally, the husband owned everything, except *mombe yehumail/inkomo yohlanga* and *maokol/impahla zezandla*. Now the wife can buy and own any property in her own name. Anything else will be considered the husband's.
- **INHERITANCE** An heir may be appointed by the family but will only inherit symbolic customary objects.

An executor will be appointed by the court who will be responsible for distributing the property according to a plan approved by the court.

A spouse will inherit any house owned by the deceased spouse in which he or she was living, along with the household goods.

The surviving spouse or spouses and children, will inherit all the remaining property in proportions determined by the law.

If there is no surviving spouse or children, the parents and brothers and sisters may share the property.

- **DIVORCE**

The court will decide who gets what property. The court will consider how long the marriage was, what each person contributed to the marriage and so on.

## SEXUAL RELATIONS

- **DUTIES**

A married couple has the right under the law to engage in conjugal (sexual) relations. But no obligation can be forced by any court. A woman has no duty to engage in sexual relations whenever her husband demands it. If a husband forces his wife to have sex, he can be charged with rape.

- **ADULTERY**

The marriage forms a bond between the two partners which should not be disturbed by outsiders. If the wife has a relationship with another man, that man will be disturbing the marriage bond, and he can be sued for adultery by the husband. The husband may be involved in a relationship with another woman who becomes a wife, and the other woman cannot be sued for adultery in a court.

## CHILDREN UNDER 18

### Who must support the children? What right each parent has to the children?

- **GUARDIANSHIP** All parents, that is either the wife or husband can exercise the right of guardianship over their children.  
  
If either parent dies the surviving parent can exercise the right of guardianship on his or her own children automatically.
- **CUSTODY** The custodian is the person who looks after and brings up the children. The custodian makes everyday decisions about the children's lives.  
  
The husband and wife share custody of their children while they live together.  
  
If the man and woman separate, the court decides who should get custody of the children. He decides what is best for the children.
- **MAINTENANCE** Both parents have the duty to maintain the children up to the age of 18, and beyond that if the child is still in school, or needs care for any other reason.
- **LEGAL STATUS** All children born or conceived during the marriage are recognised by the law as the children of the husband unless he can prove they are not. He is thus responsible for maintaining them.

## MAINTENANCE OF SPOUSES

### What financial support a man or woman can get during the marriage and after it ends?

- **DURING** Both husband and wife have a duty to maintain each other according to their ability.
- **AFTER DIVORCE** Both spouses continue their duty to maintain each other after they are divorced, as long as the partner has not remarried.

## DIVORCE

### How you can end the marriage

- **FOUNDATIONS**
  1. Irretrievable breakdown of marriage. This means there is no hope for the marriage to work in the future.
  2. Incurable mental illness or continuous unconsciousness of either the husband or the wife.
- **COURT** You can get a divorce from the customary law division of the magistrates court. A person applying for a divorce should also apply for an order for maintenance and custody of the children and division of the property. Either spouse can also apply for a maintenance order for him or herself.



**THE  
UNREGISTERED  
CUSTOMARY LAW  
UNION**

The husband may marry more than one wife

This union is not legally a marriage  
but is recognised by the law for some purposes

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## RESTRICTIONS

### Who can and cannot have this kind of relationship?

- **AGE** Both parties must be aged 18 years and above to enter into this union.
- **RELATIONSHIP** There are different rules amongst different tribes or groups. In general, people cannot marry any blood relative, even third or fourth cousins.  
  
A brother can marry his dead brother's wife or wives (except the eldest brother who cannot).
- **TWO PEOPLE** Only Africans can marry by customary law. The woman must be unmarried. The husband can have other customary law wives.
- **LOBOLA** Normally lobola is paid, but it is not required.
- **CONSENT** The couple themselves must consent. It is against the law to force anyone into a marriage of any kind. The families must also consent as this is the basis for a union which follows traditional custom.

## SEXUAL RELATIONS

- **DUTIES** A married couple has the right under the law to engage in conjugal (sexual) relations. But no obligation can be forced by any court. A woman has no duty to engage in sexual relations whenever her husband demands it. If a husband forces his wife to have sex, he can be charged with rape.
- **ADULTERY** The wife will be committing adultery if she has a sexual relationship with another man. That man cannot be sued in the magistrates court, but may be sued by the husband in the chief's court.

## FORMALITIES

### What you must do to have this relationship

- **WHAT IS DONE**
  1. The man and woman must freely agree to marry and must be aged 18 years and above.
  2. The two families must agree to the union.
  3. The guardian hands over the woman.
- **CEREMONY** The families decide about the ceremony, according to custom. Since it is not a legally recognised marriage, there will be no marriage officer.
- **CERTIFICATE** There is no certificate, since it is not legally a marriage, but only a customary union.

## PROPERTY CONSEQUENCES

### Who owns what during the relationship and after it ends

- DURING THE UNION** Each person owns their property separately. If they separate, they each take their own property.
- INHERITANCE** The same rules of inheritance will apply as for a registered customary law marriage.
- All spouses and children will share in inheriting the property.

## CHILDREN UNDER 18

### Who must support the children? What right each parent has to the children?

- **GUARDIANSHIP** If lobolo has been paid, the father is the guardian of children under 18. If he is dead, another male relative is the guardian. The wife can apply to the court to make her the guardian, and may be given guardianship if she can prove that it is in the interest of the child.
- **CUSTODY** The custodian is the person who looks after and brings up the children. The custodian makes everyday decisions about the children's lives.
 

The mother and father share custody of their children while they live together.

If the man and woman separate, the court decides who should get custody of the children. They decide what is best for the children.
- **MAINTENANCE** Both parents have a duty to maintain the children up to the age of 18 and beyond if the child is still at school.

- **LEGAL STATUS** All children born or conceived during the marriage are recognised by the law as the husband's children and he will be responsible for maintaining them. Children born during a customary union have the right to inherit from their father.

## MAINTENANCE OF SPOUSES

### What financial support a man or woman can get during the relationship and after it ends?

- **DURING THE UNION** The husband and wife have a duty to maintain each other during the existence of the union. Either spouse can make a claim for maintenance at the magistrates court.
- **AFTER THE UNION** Neither spouse can claim maintenance after the union is dissolved.

## DISSOLUTION

### How you can end the relationship?

The man and the woman can separate whenever they want to. Customs vary, but it is common for the man to make a declaration before the chief that the union is dissolved, and will then take the woman back to her family. He may make a token payment.

Legally, the couple cannot get a divorce in the court, since the court did not recognise their marriage. However, recently some couples have had their customary unions dissolved in the courts with division of property being effected and order for maintenance and custody being made. The customary law court can also divide the property and make orders for maintenance and custody.

**LIVING  
TOGETHER**

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## RESTRICTIONS

### Who can and cannot have this kind of relationship?

- **AGE** A man and a woman over 18 years old can live together.

A man who has a sexual relationship with a girl under 12 years of age can be prosecuted for rape, even if she consents.

A girl between the ages of 12 and 14 is still considered incapable of consenting to sex. If it is proved that indeed, she consented, the boy aged 12 and above or man is charged for committing a crime, "sexual intercourse with a young person in contravention of section 70 of the code" (What used to be statutory rape). The defense has two aspects to prove that:

- (i) the girl was capable of consenting, and
- (ii) she indeed consented.

If a woman is under 18, her guardian can claim seduction damages. If she is over 18, she herself can claim seduction damages.

- **RELATIONSHIP** Any two people can live together. Brother and sister can be prosecuted for having sexual intercourse within a prohibited degree of a relationship.

## FORMALITIES

### What you must do to have this relationship

There are no formalities. The man and woman must freely consent to live together.

## PROPERTY CONSEQUENCES

### Who owns what during the relationship and after it ends

Each person owns their property separately. If they separate they each take their own property.

## SEXUAL RELATIONS

- **DUTIES**                      The couple are engaging in sexual relations without the approval of the law, hence the law will not protect their relationship. Either partner can have any relationship they want with anyone else, and it will not be considered adultery.
- **ADULTERY**                      Since there is no legal bond of any kind, either partner can have any other relationship they wish with anyone else, and it will not be considered as adultery.



## CHILDREN

### Who must support the children What rights each parent has to the children

- **GUARDIANSHIP** Both parents can exercise rights of guardianship over their child or children in consultation with each other. The guardian makes all legal decisions about the children. The woman is the guardian of any children of the relationship if she is 18 years old or older.
- **CUSTODY** The custodian looks after, and brings up, the children.  
  
The woman is the custodian of any children born from the relationship. This is true whatever age the woman is.
- **MAINTENANCE** The man is responsible for maintaining or helping to maintain any children born from the relationship. (This is true even where the man and woman never shared the same home).
- **LEGAL STATUS** Children born from the relationship are born “out of wedlock”. But legally, they have the same rights as children born in marriage.

## MAINTENANCE OF PARTNERS

### What financial support a man or woman can get during the relationship or after it ends?

The two people have no legal responsibility to maintain each other during or after the relationship.

## SEPARATION

The two people can separate whenever either one of them wishes to. They cannot get divorced because they are not married.

## IMPORTANT FACTS ABOUT MARRIAGE IN ZIMBABWE

- o Civil marriage under the Marriages Act and customary law marriage under the Customary Marriages Act are easily recognised by the courts, because the couples have a marriage certificate.
- o Unregistered customary unions will also be recognised if a person can prove that a union existed. You will need affidavits from both families, which may be difficult if in-laws refuse to co-operate.
- o A letter from a church stating that your union was blessed in church is not a marriage certificate, but it could help to prove that a union did exist.
- o It is always better to register your marriage so that it is easy to prove that you are married.

The LRF has pamphlets and leaflets on a broad range of legal topics. If you would like further information and legal advice please contact your nearest LRF Centre.

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