

Requisites of Marriage.

- I. The parties must agree on contract to get married  
These must be consent on both sides.
2. The parties must be competent to be married to each other :-  
i.e; (i) they must have reached the age of marriage 16 for girl  
and 18 for boys  
(ii) they must not be within the prohibited degrees of  
marriage - must not be too related to each other.
3. The parties must go through a marriage ceremony in accordance with for-  
malities prescribed by the State.

N.B. The State must know about their marriage because marriage confers certain rights and obligations on the parties as regards :-  
(a) their property rights  
(b) their personal rights  
(c) their contractual obligations  
(d) their relations to one another.

4. Marriage is a contract which one enters into of one's free will, but  
which one cannot get out of without the consent of the State.

## Marriage Ceremony.

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I, A marriage ceremony must be performed by a duly appointed marriage officer either.

- (i) after a publication of a notice of the intended marriage,
- (ii) after a publication of ~~the~~ banns of the intended marriage
- (iii) after a special licence granted to the parties of the intended marriage.

2. (a) The marriage officer may be a magistrate, in which case the ceremony is said to be a civil one.

(b) The marriage officer may or be a minister of religion designed to solemnise marriages according to Christian, Jewish or Mohammedan rites or the rites of any Indian religion in which case the ceremony is said to be a religious one.

N.B. Not every minister of religion can solemnise a registrable marriage but only one specially appointed by the minister of Interior for ~~the~~ the purpose. Hence minister of separatist churches are not marriage officers as the minister of Interior has not recognised them for this purpose. Even ministers of recognised churches are not automatically accepted as marriage officers by the minister of the Interior. Their standard of education and fitness on the grounds are taken into account before they are recognised. Recognition may also be cancelled by the minister of the Interior (e.g.: - for contravening the marriage laws, filling in forms improperly, solemnising marriages where proper formalities have not been observed or even for political reasons e.g. Carron Calata).

## Forms Of Marriage

### Marriage of Notice

1. Notice of the intended marriage must be posted up at the Court house of the district where the parties reside.
2. The notice must be read out in the Court in three court days, this is usually once a week and therefore the process takes three weeks.
3. The marriage must then be celebrated within three months after the last notice day. Otherwise the notice lapses and the whole process has to be started all over again.
4. The object of the notice is to give persons especially the parents of minors an opportunity of objecting to the marriage.
5. If no objection is made before the ceremony the parents cannot afterwards raise any objection for they are deemed to have received the ~~the~~ necessary notice and other consent to the marriage is implied.

Marriage of Baans.

1. Notice of the intended marriage is here given to the publication of banns during divine service in the parish in which the parties reside for three Sundays prior to the ceremony.
2. The marriage must take place within three months of the publication of banns.
3. If the banns are published in a church not attended by the parents of a minor party, the parents are not deemed to have had notice of the marriage and if they do not consent to it, they can have the marriage set aside.

N.B. The marriage of the minor require the consent of their parents. If this has not been given, the parents can, not must, have the marriage set aside.

## Marriage Of Special Licence.

1. A special licence is a permit to marry granted by a magistrate to the parties to an intended marriage, to marry without notice to the public.
2. Such a licence is granted to the parties on the basis of declaration made by them to the magistrate as to their ages and condition.
3. The parties must be 21 years or over. Otherwise in the case of a minor the written consent is required of either ~~par~~ (a) the parents or (b) the guardians or (c) the Judge President of the Local Division of the Supreme Court. Otherwise the parents may have the marriage set aside if they do not consent to it.
4. A fee of £5 has to be paid for a special licence.
5. Once the licence has been obtained the marriage may be solemnised by any marriage ~~i,e,~~ either by a magistrate or a minister of religion.
6. The licence is valid for three months, after that it lapses.
7. Such licences are obtained where-for one reason or another where the <sup>parents</sup> parties wish to marry quickly or where their <sup>A</sup> withhold consent to their marriage unreasonably.

The Position Natal.

- I. Bantu Christian marriages in Natal are governed by Law 46 of 1887 as amended by Law 44 of 1903.
2. Under this Law no African can be married by Christian rites unless he has obtained the necessary licence to marry. Failure to comply with these requirements renders the marriage null and void.
3. To obtain a licence the intending parties must appear before the Native Commissioner of the district in which the parties or intended Crude ~~reside~~ reside. There they must make declarations in which they acknowledge that the nature and obligations of the marriage have been fully explained to and understood by them. The licence is then granted to them.
4. ~~If~~ <sup>exempted</sup> If the woman is not ~~adopted~~ from Native Law, whatever her age her father or guardian's consent is required.
5. If the parents withhold their consent unreasonably the parties may petition the Governor General who may grant his authority for the issue of the licence.
6. Once the licence has been obtained the marriage may then be solemnised by a marriage officer licensed under Act 44 of 1903.
7. Once persons have contracted a Christian marriage, they may not afterwards contract a customary union.
8. Africans exempted from the operation of Native Law under Law 28 of 1865 are married in the ordinary way, by publication of banns or notice or special licence.

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Marriage Law in South Africa.

Registration Of Marriages v- Act No. 17 of 1923.

38. Every special licence as prescribed shall be transmitted by the officer who solemnized the marriage, with the duplicate original register, for record to the registrar of births, deaths and marriages of the province in which the marriage took place.
- 39.(1) The marriage officer solemnizing ~~xx~~ any marriage, the parties thereto and at least two competent witnesses shall sign on original and a duplicate original register of such marriage on the prescribed form before they leave the premises where the marriage took place.
- (2) The marriage officer shall keep the original register with his record and shall within one week from the date of the marriage, transmit the duplicate original register to which revenue stamps to the prescribed value have been affixed to the registrar of the province in which the marriage took place for record.
47. Any person who contravenes or fails to comply with any provision of this act or of any regulation for the contravention whereof or for the failure --e to comply <sup>wherein</sup> ~~with~~, no penalty is specially provided, shall be liable on conviction to fine not exceeding £25.

Regulations formulated under G.N. 1819 of 31. 10. 1923.

The Position In The Transvaal

- I. Africans Christian marriages are contracted not in the same way as marriages for Europeans but under the provisions of the Coloured Persons Marriage Law No.3 of 1897 as amended.
2. Such marriages are solemnised by either by Civil marriage officers or by religious marriage officers.
3. The formalities are as follows:-
  - (i) submission to the marriage officer of an application for the celebration of the marriage.
  - (ii) a certificate from the parents or guardians of the parties or their chief or their minister that there is no impediment to the marriage.
  - (iii) No publication of baans on the production of a official marriage licence valid for three months.
  - (iv) a religious ceremony which must take place between 8a.m. and 4p.m.
4. Such marriages can only be dissolved under the ordinary law.
5. The marriage officer must satisfy himself that the man has complied with laws affecting Africans e.g pass laws.

The Position in the Free State.

Christian Marriages there can only be contracted under the ordinary law contracted in Law 26 of 1899 e.g; by publication of banng notice or special licence.

### African Marriages And Act 38 of 1927.

Section 22 of Act 38 of 1927 affects Christian marriages between Africans in the following ways:-

- (I) It does away with the automatic application of community of property to African marriages. Africans wanting community of property to apply to their marriages must make a special declaration and that effect prior to marriage.
- (ii) Regulates position of persons who are parties to customary unions. Provision must be made for customary wife and her children before Christian marriage is solemnised.
- (iii) Provides for penalty i.e; for marriage officers who do not observe these provisions.

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PROOF OF MARRIAGE.

- I. The ~~xxxm~~ existence of a marriage must be proved by the best available evidence.
  - (a) The best evidence is the original register,
  - (b) The next best evidence is a copy of the original register i.e a marriage certificate.
2. Every marriage certificate signed by the Registrar of Marriages or by a Marriage Officer is prima facie evidence of the particulars set forth in it.
3. If such a certificate is impossible to obtain, a marriage may be proved by evidence that the parties went through the ceremony e.g; by a person who was present together with evidence of cohabitation and repute i.e that the parties lived together and were regarded by their neighbours as man and wife.

The parties may be dead and it may not be possible to procure witnesses of the ceremony. In that case evidence of living together ~~xxxm~~ as man and wife may be given by other persons. The presumption of Law is in favour of marriage rather than against it.