



Tying the Knot Abroad

For those romantics, escapees from tradition (Las Vegas chapel not country church) or the merely impetuous, what does getting married abroad mean in terms of validity of the marriage? And for those who marry abroad and subsequently move to live in the UK, is their marriage recognised?

The determination of the validity of a marriage entered into abroad is divided into two categories, the *formal* validity of a marriage; and the *essential* validity of a marriage.

The law governing the formal validity of a marriage entered into abroad is not the law of England & Wales, but rather the legal requirements of the country in which the marriage was entered into. This law is, in the Latin phrase, '*lex loci celebrationis*'. This means that the general rule is that if the formalities of the marriage comply with the local laws of celebration of marriage, the marriage is valid.

This is the case even in situations where it does not comply with the requirements of one or both parties' place of domicile (including England & Wales). However, if the formalities comply with the domicile, of one or both of the parties, but not with the requirements of the place or country in which the parties marry, it is generally not a valid marriage.

A presumption that the marriage is legal in the country in which it was celebrated can be rebutted if there is evidence that the marriage was not legal in that country. For example, the most infamous of customary marriages must be that of Mick Jagger and Jerry Hall, whose Bali beach wedding ceremony in 1990 (though no doubt an excellent party) was not a valid marriage.

Mr. Jagger reportedly settled Ms. Hall's financial claims on separation on terms as if the parties had been married. Although in most cases the financial implications of a non-valid marriage may not be as potentially significant, the difference in the scope and quantum of financial entitlement on divorce, as opposed to claims by an unmarried partner on relationship breakdown, is critical. There are also significant consequences of a marriage not being valid with regard to spouse visas, immigration, tax and entitlement on death.

If it is not clear whether a foreign marriage will be recognised, an application can be made to the English Court for a '*Declaration as to Marital Status*'. In the case of MM v NA (2020) Mrs Justice



Roberts, sitting in the High Court, found that courts in England & Wales can recognise the laws of a body in effective control of an overseas territory, even if not recognised by the UK as a state. In that case, the fact that the Republic of Somaliland was not recognised by the UK government was held to be no reason to refuse recognition of marriage, and the Declaration was granted.

The English court will consider the facts of the case and the behaviours of the parties in determining the validity of the marriage. In the 2017 case of *Hayatleh v Modfy* it was held that while the validity of the marriage must be determined by Syrian law, the English Judge must apply domestic laws to determine issues of fact and consider whether the presumption of marriage applied. The husband's appeal against a finding that a Syrian marriage was valid was dismissed, not least because he had commenced divorce proceedings to dissolve it.

In the case of *McCabe v McCabe (1994)* Butler-Sloss LJ said, per curiam, that it is doubtful that the presumption of marriage applied to customary marriages.

An anomaly exists regarding marriages in Embassies in the UK, and in many other parts of the world. Some Embassies and Consulates perform marriages within their buildings in accordance with their own domestic laws. However, those Embassies are located on English territory, and thus English law applies for this purpose in respect of the required formalities of marriage. The Vienna Convention on Diplomatic Relations 1961 does not provide that Embassies and Consulates are foreign land in the 'receiving', or host, country.

In England, a marriage has to take place on approved premises, in accordance with the Marriages Act. Unless an Embassy or Consulate has registered as approved premises under English law, and having given required notice, a Registrar of marriages attends, the marriage will not be valid. In 2012, the English High Court held that the marriage ceremony of a Moroccan couple, which took place in the Moroccan Consulate and was formalised in accordance with Moroccan law, was not valid.

For nationals of other countries, who wish to get married in their own cultural environment, and in accordance with the national custom of their country they can do so at their Embassy, but either before or after that ceremony should marry in accordance with English law at a registry, church, mosque or other religious place of worship, which is registered to perform marriage ceremonies in accordance with English law.

The *essential* validity relates to the legal requirements that must be met, in order for a marriage to be legal and binding. Each party must validly consent to the marriage and have legal capacity to



marry under the laws of the country in which they are domiciled at the time of the marriage, even if the domicile abroad is '*temporary*' to enable the marriage to take place. Thus, Ross and Rachel of '*Friends*' may have been domiciled, but did they validly consent to marry in Las Vegas...?

Sarah Cornes

sarah.cornes@iflg.uk.com

The International Family Law Group LLP

www.iflg.uk.com

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