

**EXPLORING THE LEGAL PROTECTION FOR CONTRACT MARRIAGE IN
NIGERIA: AN ARGUMENT FOR PUNITIVE DAMAGES**

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**A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE
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BACHELOR OF LAWS (LL.B) GODFREY OKOYE UNIVERSITY**

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JULY, 2026.

DECLARATION

I, ANEKEAJAGU GREAT EZINNE, with registration number U21/LAW/421, hereby affirms that this work was duly and diligently carried out by me in the Faculty of Law, Godfrey Okoye University, Enugu. Both the primary and secondary sources used to carry out this legal research, are acknowledged appropriately and referenced herein, within this project. This work is original; and has not been submitted in part or in full for the award of any degree in this or any other Faculty of Law within and outside Nigeria.

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CERTIFICATION

I, ANEKEAJAGU GREAT EZINNE, with registration number U21/LAW/421, hereby certify that this project research that this project research done by me, with the direct and diligent supervision of Miss. Florence Akubilo, has been approved by the administrative and academic staff of the Faculty of Law, Godfrey Okoye University, Enugu. In partial fulfillment of the requirement for the award of Bachelor of Laws (LL.B) Degree.

Apart from the references made and acknowledged herein within this research work, this research work is an original work and has not been presented in part or in full, for any degree of this University or any other University.

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DEDICATION

I am dedicating this work to the Almighty God who turned this childhood dream of mine into reality by his unfailing mercy, favour and greatness which is evidenced through me as a living testimony.

To my Big Daddy, Professor Christain Anieke, for his fatherly love, coaching and support, which turned out fruitful in my personal growth.

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LIST OF ABBREVIATIONS

V.A.P.	-	Violence Against Persons
S.	-	Section
RCMA	-	Recognition of Customary Marriage Act
A.C.	-	Appeal Cases
N.W.L.R.	-	Nigerian Weekly Law Report
E.R.	-	England Law Report
L.R.	-	Law Report
S.C.	-	Supreme Court
L.F.N.	-	Laws of the Federation of Nigeria
Cit.	-	Citation
LPELR	-	Law Pavilion Electronic Law Report
Ibid	-	In the same place
Et.c.	-	et cetera
i.e	-	That is
in toto	-	Completely; or as a whole
C.A	-	Court of Appeal
Pt.	-	Part
P/Pp.	-	Page
NLR	-	Nigeria Law Report
INV.	-	Investment
PARA.	-	Paragraph
ED.	-	Edition
FRN	-	Federal Republic of Nigeria
F.H.C.	-	Federal High Court

ABSTRACT

Marriage contract is happens to be one that is easily manipulated, these are evidenced in the statistical analysis of divorce cases in the Nigerian courts; and Nigeria's ranking of divorce cases globally. Majority of this Matrimonial cases, which was instituted because of breach of marriage contract often result to tort (emotional, verbal or mental abuse; torture) or crimes (such as: domestic violence, marital rape, cruelty, etc.) Although, the court is been sought to as the final hope of the common masses for enforcement of justice, however this justice that the litigants bear in mind in approaching the intention of the court, is however denied of them. As the Nigeria Judicially Precedents aren't in support of the application of punitive damages in marriage contract. Therefore, allowing the perpetrators to go scot-free of the torts and crimes committed in the course of breaching the contract by hiding behind the Judicial Precedents of unenforcement of punitive damages in marriage contracts in Nigeria; and the Law of Contract that generally prevents the application of punitive damages in contractual cases. Consequently, the rate of crimes and torts that emanate from breaches of marriage contract is indeed on the high rise as the law is been manipulated and used as an engine for fostering crimes. But unfortunately, this study has identified this loophole in the law and tends to remunerate by establishing a well-grounded argument backed up with laws and authorities to call for a need to inculcate punitive damages into the awards of breach of Marriage contract resulting from torts and crimes. Thereby drawing the attention of both the Nigeria Legislature and Judiciary to view law from a jurisprudential angle of societal dynamity which calls for deterrence and not only compensation.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Marriage as an institution is founded and governed by the religious and social norms of the society which makes it a social institution. Although, marriage is the smallest and most recognized institution in every society. Its' relevance can't be underestimated. Marriage has been relevant since time immemorial as is evident in its ability to build relationships; to the growth of the society;¹ and equally forming of alliance amongst nations. Apart from the biblical records of marriage, the first ever recorded marriage in human existence could be traced back to the far East of Asia around 2350BC.²

What existed in Asia was the traditional form of marriage which was the same form practiced all over the world until colonialism came and thrust upon locals the foreign concept of contract marriage or statutory marriage. Contract marriage is no different from all the other type of marriage as all forms of marriage are contractual in nature as it embodies the essential elements of; offer, acceptance, intention to form legal relations. Contract marriage is more or less statutory marriage and in Nigeria it is one determined by both social, cultural, religious and legal effects of the Nigerian Society. Nigerian is indeed a large country which is consist of more than 250 ethnic groups and their marriage contracts differs, in form of Statutory Marriage (Marriage under the Act), Customary Marriage of different Ethics, and Islamic marriage are all validly recognised by the Nigerian law.

¹ Gen 2:18 of the Bible

² The History of Human Marriage by Edward Westermarck, 1891.

After the contract of marriage is dully established and the parties are bounded in matrimony. Their status autonomically changes as the Contract of Marriage confers a unique status on the parties, which enables them enjoy:

1. Rights, which akin to right of consortium inclusive of companionship, affection, comfort, sexually pleasure, cohabitation.
2. Privileges which is seen in the fusion of legal personality of the husband and wife into one; and this is commonly observed as 'Mr' and 'Mrs'. Also, privilege of change of name, wherein, the married woman inherits her husband surname by virtue of marriage. This privilege of retaining of husband's surname by the woman extends after dissolution or death.³
3. Duties akin to duty of cohabitation,⁴ maintenance,⁵ consummation.⁶
4. Immunities with regards to marital rape,⁷ mutual protection of spouse from attack or harm,⁸ and marital confidentiality.⁹

And above all these, contract marriage is recognized: legally,¹⁰ religiously,¹¹ socially,¹² and culturally.¹³ Just as other contract may be breached, so are the contracts of marriage breached in many cases due to; fraud, domestic abuse or violence, lost of consortium, duress, undue influence,

³ *Cowley v. Cowley*(1990) *JELR* 87100(HL)

⁴ Section 15(2) (B) of Matrimonial Causes Act, 1970. Note: this is with regards to marriage and not mere cohabitation

⁵ Section 70 of Matrimonial Causes Act, 1970

⁶ Section 5(1)(a); 15(2)(a) of Matrimonial Causes Act, 1970

⁷ Section 6 of Criminal Code,1990. Note: an exception to this rule of marital rape in Section 1 of Violence Against Persons Act, 2015; Section 3 of Enugu State, Violence Against Persons Law, 2019.

⁸ Section 32(2) of Criminal Code,1990

⁹ Section 187 of Evidence Act 2011

¹⁰ Certificate of Marriage (signed and certified as a true copy by the registrar of such district for the time being, and recorded in a marriage register book)

¹¹ Publication of Banns and Record Keeping.

¹² Social Acceptance and Recognition or Acknowledgment

¹³ Village August Meetings, which are annual culturally ceremony in the south eastern Nigeria, are only for Married Women.

adultery, et.c. In this recent era, Contract of Marriage seems to be a contract that is been toyed with, which is evidenced in the high rate of divorce in Nigeria. According to Guardian Newspaper Online Article; a report in 2024, Nigeria ranked 11th out of 26 countries with the highest divorce rate¹⁴

More report from sources within the country showcase that the divorce rate in Nigeria has reached 2.9 per cent in 2023 based on available data on marriage and divorce, which translates to 1.8 per cent divorces per 1,000 people in the same year.¹⁵ According to Punch Newspaper, in Ogun State, data from the High Court divisions between 2017 and 2020 shows a sharp rise in divorce petitions, from 535 in 2017 to 1,016 in 2019.¹⁶

Furthermore, In 2019, Aljazeera pegged Kano State as home to the largest number of divorcees in Nigeria.¹⁷ This leads to the bone of contention here, does the wrath of the law fall weighty on the defaulting party to deter the reoccurrence of the act from the said defaulting party or another?

1.2. Statement of the Problem

The party at fault for breaching the contract of marriage tends to go scout free in case whereby the injured party doesn't seek compensatory relief by way of damages before a court. Meanwhile, in cases whereby the court is called upon to intervene and award damages for wasted time, financial

¹⁴<https://www.google.com/url?q=https://guardian.ng/life/why-nigerias-divorce-rate-keeps-rising-experts/&sa=U&ved=2ahUKEwjSlbOxg9yTAxV8VEEAHVmYNYMQFnoECAyQAg&usg=AOvVaw3b-Zg1Fh1MNUPF-ZhNrdUj> accessed on 7th April, 2026.

¹⁵https://www.linkedin.com/redir/redirect?url=https%3A%2F%2Flnkd%2Ein%2FdctA8fbb&urlhash=ufv_&trk=public_post-text accessed on 7th April, 2026.

¹⁶ <https://www.google.com/url?q=https://punchng.com/rising-cases-of-divorce-demand-urgent-attention/&sa=U&ved=2ahUKEwj33PXwgNyTAxWhX0EAHYyeONMQFnoECAQQAg&usg=AOvVaw0271ggiWW4kzrPQ-aTs3zV> accessed on 7th April, 2026.

¹⁷ https://www.google.com/url?q=https://punchng.com/marriage-experts-worry-over-rising-divorce-among-young-couples/&sa=U&ved=2ahUKEwjQ8sa-idyTAxVuYEEAHdy8AsAQFnoECBgQAg&usg=AOvVaw3eV7QL3UE1u_MwTnTNumlMwTnTNuml accessed on 7th April, 2026.

reliefs, judgement might not be equivalent to the damage he or she has caused, especially where the party is financially advantaged enough to secure a good lawyer to clean up his or her mess. But the other side of the issue is that there is no legal basis for asking for damages for breach of the marriage contract which an injured party who is broken may feel entitled to.

In tort law, emotional distress can attract damages even when the action leading to the emotional stress is a one distinct action. Where as in Marriage, the party may have suffered:

1. Physically- a permanent bodily scar or pain; a dislocation or fraction of bones or joint;
2. Emotionally- the party is too broken to consider a re-marry and such a party would live as a sadist.
3. Psychology- the party becomes mental unstable because of the deep attachment and years of bonding and cohabitation can't be easily broken, which had led some to suicide or end up in rehabilitation center. Let's use the case study of Shehu Sadiya, a 17 years old girl from Tudun Murtala quarters, Nasarawa Local Government Area of Kano State, who killed herself by taking insecticide. It was gathered that her parents had a severe fight which lead to the father's firm decision of divorcing her mother. Despite all her pleading, he still stood on his decision of a divorce; she suffered emotionally traumatized which lead to her suicide.¹⁸

According to the Head of the Family and Child Justice Unit at the Lagos State Office of the Public Defender, Mrs. Oluwatoni Ladipo, who delivered a sobering reality check, at the inaugural Family Law Conference held in Ikeja, Lagos, 2015. In Nassarawa's Keffi LGA, 62 per cent of children from divorced homes exhibited aggression or behavioural issues, 67 per cent experienced anxiety and depression, and half reported difficulty in forming healthy relationships. A regional study in

¹⁸<https://newsrangers.com/17-year-old-girl-commits-suicide-over-parents-divorce/> accessed on 2nd April, 2026.

Cross River showed a direct link between parental separation and plummeting academic performance. In Enugu, Ekiti, Nsukka, and Lagos, children from separated families were more likely to drop out of school, struggle socially, and face persistent absenteeism.

Among Nigerian adolescents, 73% of students from separated homes scored below 50 on the Rosenberg Self-Esteem Scale, revealing extremely low self-worth, she said. In Sokoto, for example, children of divorced women face not only stigma but economic exclusion. “They are pulled out of school, denied inheritance, and rejected by extended families,” she noted.¹⁹

Another researcher in 1968 also observed that the divorce rate, per 100 extant marriages, was between 3.4 and 4.5 per cent among the Yoruba of South-West Nigeria. The 2006 National Population Census data recorded that 704,000 Nigerians were divorced, with 230,000 males and 474,000 females. Also, 2018 data from Nigeria’s Demographic and Health Survey revealed that women were more likely than men to be divorced or separated, as three per cent of women were either divorced or separated as against one per cent of men. The data also revealed that 70 per cent of women and 57 per cent of men were either married or living with a partner.²⁰

These life scenarios can be referred to as a tip of an iceberg, when compared to thousands of unreported cases out there, which happens on daily basis. This is why this argument of inculcating punitive damages should be considered into matrimonial cases because only reward of payment of damages seems not substantially enough. Inculcation of punitive damages in addition to

¹⁹<https://www.google.com/url?q=https://punchng.com/silent-victims-children-bear-the-brunt-of-broken-marriages-divorce-surge-1/&sa=U&ved=2ahUKewjQ8sa-idyTAxVuYEEAHdy8AsAQFnoECAUQAg&usg=AOvVaw0ta1GBw4OGQXSS4ZTrymLz> accessed on 7th April, 2026.

²⁰<https://punchng.com/marriage-experts-worry-over-rising-divorce-among-young-couples/>

rewarding of damages is substantial enough not just to punish but also to detect others from inappropriate breaching of contract marriages.

The problem here is that the contract of marriage seem to be abused, as parties easily divorce or get a judicial separation of their spouses. If there happen to be a strict consequence to detect them for the abuse of contract of marriage, the contract of marriage would be respected as well as its sanctity. So, I humbly submit for the introduction of punitive damages as a way of enforcement and protection of the contract of marriage against abuse.

1.3. Research Questions

1. Whether the existing measures used to protect contract of marriages in Nigeria are sufficient?
2. How effective punitive damages is in enforcement of contracts with aid of cases?
3. Whether the argument of introducing punitive damages in protection of contract of marriage would limit its abuse?

1.4. Aim and Objectives of the Study

The aim of this research work is to make argument for the use of punitive damages as a measure needed in fostering the legal protection of contract marriages in Nigeria.

The objectives are:

1. also as an effective measure used to limit the abuse of contract of marriage thereby the defaulting party has to pay for the breach of contract of marriage
2. Not just mere breach of marriage contract but gross negligent, fraud or deceit; or any behaviour which the court deem fit to warrant punishment to deter a similar conduct in the society. The defaulting party should suffer a detecting punishment apart from damages meant

to be paid, such may include: forfeiture or division of wealth or properties; loss of custody of children; or mandatory provision of the welfare of the affected party or parties(maintenance).Although, Punitive damages are normally not awarded in the context of a breach of contract claim, but it is awarded at the court's discretion when the defendant's behavior is found to be harmful, flagrant, unconstitutional, or reckless breach of duty.

1.5. Scope and Limitation of the Study

The scope of this study is limited to the argument of inculcating punitive damages as a way of fostering a strong legal protection for contract marriages which can't be easily abused or manipulated. Whereby the defaulting party is meant to bear a greater loss as a consequence of their actions or ill-mannered conduct that doesn't just break the marriage, but broke the affected party physically, mentally or psychologically and emotionally.

1.6. Significance of the Study

This is to strengthen and make stricter the enforcement part of breach of contract of marriage which is seen as loose and easily manipulated, if the defaulting party is financially capable to get a good lawyer who would get a lesser damages which isn't commemorate to the breach he/she has done. Meanwhile, the affected party is left with an unsatisfied and inequivalent judgement of a greater loss suffered.

1.7. Research Methodology

This research employed the doctrinal Research Methodology which focuses on the use of both primary and secondary material resources: primary material resources entails: Statutes, Judicial Precedents from both foreign and local (Nigeria) case laws.

Secondary material resources entails: Textbooks on Notable Authors both foreign and local (Nigeria) under: Family Law; Contract Law; Nigeria Legal Method; Nigerian Legal System; Tort Law; Jurisprudence.

Dictionaries (English and Law); Encyclopedias; Religious Books (Bible; Canon Code; Quran)

Certified Online Resources (online articles and online newspaper publications).

1.8. Literature Review

It is indeed commendable to see a good number of works on family law from legal practitioners to law academicians; unlike few decades ago (1974). Only one prestigious work was always referenced to, an intellectual legal ancestor- E.I. Nwogugu on Family Law in Nigeria. This work indeed showcases the mastery of family law as it adventured deeply into Nigeria Family Law which is spiced up in the rich Nigeria culture and heritage.

The First Edition in 1974, illustrated and emphasized the development of family law from the onset, wherein all aspects of Matrimonial relationships were governed by Nigeria Customary-Law Rules, up to 1970 when The Matrimonial Causes Decree 1970 brought a dual system of family law.

It subsequently, elaborated on the changes brought by the Matrimonial Causes Decree 1970 in marriage contract; Contract to Marry; Celebration of Marriage; Legal Effects of Marriage.²¹ Matrimonial reliefs like: Court Jurisdiction, Nullity and Dissolution of Marriage; Restitution of

²¹Part I of E.I.Nwogugu. Family Law, First Edition.1974

Conjugal Rights.²²Laws governing the relationship between child and parent weren't left out.²³ Likewise, the issue of succession and extended family.²⁴

The Second Edition of Nigeria Family Law by E.I.Nwogugu, 1990, was published as a result of the effect of new decisions of court; the enactment of the first indigenous Matrimonial Causes Rule in 1983 and new State Adoption Laws which all lead to the discard of English Rules were applicable in Nigeria since colonialism. The second edition did a good job by analysing the new statutory development in dissolution of statutory marriage;²⁵ancillary reliefs;²⁶ succession under the general law,²⁷ and Customary Law;

Apart from the above, these subsequent sections were amended: bride price; three year rule for divorce; children in need of care and protection; damages for adultery; Legitimacy and Citizenship as effected by the 1979 Constitution of the Federation. The Third Edition of Nigeria Family Law by E.I.Nwogugu, 2014, which is indeed a splendid and well detailed revision was birthed out of the dynamic nature of family law with regards to: domestic violence; widowhood; Court decisions of the Supreme Court with regards to Cases of Intestate Succession of Persons married under the Act.²⁸Likewise the Court of Appeal with regards to power of court to stay or transfer matrimonial proceedings.²⁹This Third Edition broadly discussed significant developments brought by the enactment of Child Rights Act 2003 including: Parentage, Legitimacy and

²²Part II of E.I.Nwogugu. Family Law, First Edition.1974

²³Part III of E.I.Nwogugu. Family Law, First Edition.1974

²⁴Part IV of E.I.Nwogugu. Family Law, First Edition.1974

²⁵Chapter 60 of E.I.Nwogugu. Family Law, Second Edition.1990

²⁶Chapter 9 of E.I.Nwogugu. Family Law, Second Edition.1990

²⁷Chapter 14 of E.I.Nwogugu. Family Law, Second Edition.1990

²⁸*Salubi v. Nwariaku* (2003) JELR 44851(SC)

²⁹Pursuant to Section 9 of Matrimonial Causes Act; and also on Ancillary Reliefs.

Legitimation;³⁰Guardianship;³¹Fostering and Adoption;³²Child Custody;³³Protection of children;³⁴Supervision and Care for Children.³⁵

Another commendable work in Family Law is that of; Margaret C. Onokah on Family Law. The work didn't only explore the Distinctive Marriage Contracts in Nigeria.³⁶ It appreciated this, by tracing the historical evolution of family law dating back to the political pluralism of Nigeria as an aspect of Federal Constitution that affects the sources of Nigeria Family Law.³⁷Also discussing at length, the pre-colonial: marriage contract; divorce; the interposition of the Marriage Act and Problem of Adaptation to the English Matrimonial Causes Laws up to 1970.³⁸

The temples of justice (the courts of family law) were elaborated upon from the pre-colonial judicial system, to the practice of dual court system in Nigeria which is inclusive of: the introduction and growth of English Style Court, and the application of *Stare Decisis*; the establishment and growth of Native Courts. This stretched forward to the constitutional provisions on court and their hierarchy³⁹

The work gave a well detailed analysis of Double-Deck Marriages; from its contract to the theories on this marriage.⁴⁰ The termination of this marriage was equally analyzed, alongside the

³⁰Chapter 13 of E.I. Nwogugu. Family Law, Third Edition. 2014

³¹Chapter 14 of E.I. Nwogugu. Family Law, Third Edition. 2014

³²Chapter 15 of E.I. Nwogugu. Family Law, Third Edition. 2014

³³Chapter 18 of E.I. Nwogugu. Family Law, Third Edition. 2014

³⁴Chapter 16 of E.I. Nwogugu. Family Law, Third Edition. 2014

³⁵Chapter 17 of E.I. Nwogugu. Family Law, Third Edition. 2014

³⁶Margaret C. Onokah. Family Law.2003, at P.67-158.

³⁷Margaret C. Onokah. Family Law.2003, at P.3

³⁸Margaret C. Onokah. Family Law.2003, at P.14- 25

³⁹ Margaret C. Onokah. Family Law.2003, at P.26-65

⁴⁰Chapter 5, Margaret C. Onokah. Family Law.2003

jurisdiction of court that allows divorce proceedings from this marriage down to the death of spouses of this marriage.⁴¹

Subsequently, Succession was discussed with regards to testamentary disposition and succession on intestacy,⁴² which extended to the issue of Legitimacy and Illegitimacy.⁴³ In addition, termination of marriage contracts (statutory and customary)⁴⁴ was extensively studied down to maintenance,⁴⁵ settlement and property rights.⁴⁶

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Concept Of Contract

The concept of contract has been defined by various authorities: High Profile Law Academician; Learned Jurists; Law Institutions.

⁴¹Chapter 9, Margaret C. Onokak. Family Law.2003

⁴²Chapter 10 &11, Margaret C. Onokak. Family Law.2003

⁴³Chapter 12, Margaret C. Onokak. Family Law.2003

⁴⁴Chapter 6 & 7, Margaret C. Onokak. Family Law.2003

⁴⁵Chapter 8, Margaret C. Onokak. Family Law.2003

⁴⁶Marriage and Divorce Law, Emeka Chianu, 2023. at p.382

Contract is an agreement that is enforced or recognised by the law as affecting the legal rights and duties of the parties.⁴⁷Contract is a promise or set of promises which the law will enforce.⁴⁸Contract is defined as an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties.⁴⁹Contract is an agreement giving rise to obligations which are enforced or recognised by law.⁵⁰

A contract can be defined as an agreement enforceable by the law, between two or more persons to do or abstain from doing some act or acts, their intention being to create legal relations and not merely to exchange mutual promises, both having given something, or having promised to give something of value as consideration for any benefit derived from the agreements.⁵¹

Contract is defined as a promise or set of promises, the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.⁵²Contract is an agreement upon sufficient consideration to do or not to do a particular thing.⁵³Contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do particular things.⁵⁴

Contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law as a binding contract⁵⁵

2.1.2 Concept of Marriage

⁴⁷Sagay: Law Of Contract (3rd ed.), p.1

⁴⁸Sir Fredrick Pollock, Principles of Contract (13th Ed, Stevens 1950) 1

⁴⁹Sagay, Nigerian Law of Contract (2nd Ed.2000),p1

⁵⁰Treitel, The Law of Contract (12th Ed, Sweet and Maxwell 2007)1

⁵¹Smith and Keenan, English Law (7th Ed, Pitman Publishing Ltd 1983) 171

⁵²Restated of American Law: Contracts (2nd Ed,(American Law Institute 1981) para 1

⁵³Lord Blackstone in Commentaries on the Laws and Constitution of England (American Bar Association Publishing Library 2009)222.

⁵⁴*Tobi, J.C.A. in Orient Bank (Nig) Plc vs. Bilante International Ltd (1997) 8 NWLR (pt 515)*

⁵⁵Black's Law Dictionary, Eleventh Edition.

The concept of marriage from Bromley's straightforward definition hinted that the term, marriage is a voluntary union for life between a man and a woman or women to the exclusion of all others⁵⁶. Marriage is a universal institution which is recognised and respected all over the world as the legal union of a couple as spouses.⁵⁷

- a. A contract made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives and to discharge towards each other the duties imposed by law on the relation of husband and wife.⁵⁸
- b. Marriage is the legal union of a man and woman as husband and wife; the state of being married; wedlock.⁵⁹
- c. The act of marrying or the state of being married; specifically, a compact entered into by a man and woman, to live together as husband and wife; wedlock.⁶⁰
- d. Marriage is the ceremony or process by which the legal relationship of husband and wife is constituted.⁶¹

2.1.3 Concept of Punitive Damages

Punitive Damages is the class of damages intended not to compensate the plaintiff but rather "to punish the defendant and to deter him from similar behavior in the future."⁶² This concept was emphasized by the House of Lords in 1962, where it aired its disapproval of these non-compensatory damages and stated that punitive damages should be awarded in three limited cases as follows:

⁵⁶P.M Bromely, Op. Cit. P.1; *Hyde v. Hyde (1866) L.R 1 P&D*.

⁵⁷E.I. Nwogugu. Family Law in Nigeria (third edition), HEBN Publishers: Ibadan 2014 p.4; Black's Law Dictionary; Eleventh Edition; Thomson Reuters Publication.

⁵⁸ Bouvier's Law Dictionary: Baldwin's Students Edition; 1946, Published by Banks-Baldwin Law Publishing Company, USA.

⁵⁹ The American Heritage College Dictionary; 4th Edition.

⁶⁰ The New International Webster's Comprehensive Dictionary of the English Language; 2010; Encyclopedic Edition.

⁶¹ Mozley & Whiteley's Law Dictionary; Ninth Edition, by John B. Saunders Esq; London Butterworths 1977.

⁶² Winfield and Jolowicz, op.cit. p.593.

1. Where the plaintiff is the victim of arbitrary or unconstitutional oppressive conduct by a government official;
2. Where the profit calculatedly made by the defendant as a result of his deliberate act exceeds the plaintiff's loss;
3. Where status authorize the award of exemplary damages.⁶³

In Nigeria, the award of punitive damages is governed by judicial precedents and legal principles rather than explicit statutory provision; this was expressly portrayed when the Supreme Court threw an open question as to whether the Nigerian Courts should adopt the *Rooke v. Barnard* Principle *in toto*.⁶⁴

Nevertheless, Nigeria Court still adopts this principle mainly in cases of outrageous conduct,⁶⁵ gross negligence,⁶⁶ fraud, and malicious intent.⁶⁷ However, the application of this principle with respect to matrimonial cases of gross negligence, fraud or malicious intent are rare; as court often award compensatory damages over punitive damages in adultery cases⁶⁸ Unlike in America, where the award of punitive damages is been granted in matrimonial Causes through an integrated civil lawsuit for Marital tort.⁶⁹In the case of *Waite vs. Waite*⁷⁰the court acknowledged a marital tort exception by filing an integrated civil lawsuit of marital tort for physical abuse, Intentional infliction of emotional distress, fraud or financial misconduct, transmitting STDs and in some jurisdictions a spouse must file for divorce or have a pending divorce proceedings to bring a marital tort claim in court. This is what is missing in Nigeria.

⁶³Street on Torts, Sixth Edition; London Butterworths 1976, at p.440.

⁶⁴*Ezeani v. Njidiike*(1965) *N.M.L.R.*95, at p. 98

⁶⁵*Shell Petroleum v. Isaiah* (1997) 6 *NWLR* (Pt. 508) 236

⁶⁶*U.B.A. v. Achoru* (1990) 6 *NWLR* (pt.156) 254

⁶⁷*U.B.A. v. Jargaba* (2007) 11 *NWLR* (Pt. 1045) 247

⁶⁸*Baker Marine Nig Ltd v Chevron Nig Ltd* (S.C. 374/2001);

⁶⁹*Rodriguez v. Lemus* (2018) No: COA 16-1285; *North Carolina.*; https://www.law.cornell.edu/wex/marital_tort, accessed on 24th june,2026

⁷⁰*Waite v. Waite* 618 So. 2d 1360 (1993); *Florida*,

2.2 Theoretical Framework

2.2.1 Natural Law School Theory

The natural law school has a history dated from ancient times to the early middle ages (17th- 18th centuries) which was concerned with trying to discover the method by which just rules may be devised to meet ever-varying circumstances.⁷¹ Natural Law has also been stated to have gotten its first origin from the Holy Bible- after creation, everything was perfect until the fall of man due to disobedience created an environment of imbalance. So, something perfect which can be referred to as a higher obligation than simple obedience to a law must be imputed to man.⁷²

This could be seen in a well known principle of natural law by Thomas Aquinas which states that good is to be done and promoted, while evil is to be avoided.⁷³ Many famous exponents of this school like; Aristotle, Plato, Socrates, Thomas Aquinas, Thomas Hobbes, Lon Fuller, Ronald Dworkin, Francisco Suarez, et.c. All contributed to the basic natural law thesis.

This basic Natural Law Thesis includes:

1. Natural Rights: These rights are universal in the sense that, they apply to all humans irrespective of age, sex, race, et.c. For instance; "one ought not to kill the innocent" is a universal right to everyone.⁷⁴ An unjust law is no law at all (*lex iniusta, non est lex*).⁷⁵ Socrates contributed immensely here in noting that it is still just enough for Law to emanate from man through reason; it is indeed of greater importance for the natural law to embrace justness or be naturally just.

⁷¹Dias Jurisprudence, fifth edition; at p.470.

⁷²Jurisprudence and Legal Theory, 2nd Edition; Chris C. Wigwe, SAN. at p.290-291.

⁷³Jurisprudence: Mainstream, Modern, Millennial-African And The Pure Inspiration Theory of Law; Emeka Ozo Umeh, at p.27

⁷⁴This natural tenet gave birth to Universal Human Rights under international law; and Right to Life under our municipal law. (under positive law school)

⁷⁵This Maxim was first declared by St. Augustine of Hippo, an African Jurist, who is considered to be among the founding fathers of natural law that laid foundation for its expansion today.

Furthermore, natural law lawyers here have a common opinion that everyone is under a moral duty to obey the laws of his country but in cases of unjustness in law, the citizens aren't bound in conscious to obey it. In concurrence to the above proposition, St. Thomas Aquinas stated that," the force of the law depends on the extent of its injustice according to the rule of reason"⁷⁶Although, Thomas Aquinas supported this natural law thesis in his above quote of law been made to solve injustice; he brought up a contrary view that the presumption of unjustness in the law shouldn't affect the moral conscious of humanity, else the law would be disobeyed by the people because it is unjust.

2. Universal and Objective Validity of Natural Law Theory: Natural Law Theory affirms the existence of certain moral norms which are naturally inherent in humanity through reason. These moral norms are referred to as the "Ought" Proposition. The *Ought* proposition are normative or prescriptive statements that entails how things should be i.e: good is to be done and promoted, while evil is to be avoided.⁷⁷

Natural law in this context of universal validly, could be examined in line with the Ancient Chinese Confucian Theory which considers morals to be the goal of law; and law as the tool for morals. Similarly moral is seen as the root of the law, politics and human behavior-Chinese Law Code of the Tang Dynasty. This theory is seen applied in a case of ownership pertaining to a small hen by two farmers before Chinese Magistrate Court. While trying to prove ownership, the first farmer claimed that the hen ate beans; while the other claimed rice, that morning. The Magistrate made a decision for the hen's stomach to be opened; wherein it was found that the hen ate beans, and the

⁷⁶Jurisprudence and Legal Theory, 2nd Edition; Chris C. Wigwe, SAN. at p.291(5.1.3)

⁷⁷Jurisprudence: Mainstream, Modern, Millennial-African And The Pure Inspiration Theory of Law; Emeka Ozo Umeh, as p. 27.

farmer who claimed rice was punished for dishonesty- which is an issue pertaining to morality under the disguise of law.⁷⁸

Under the context of universal validity of natural law, the above Chinese Confucian Theory emerges to be consistent with most native and customary Law in Nigeria whereby morality is synonymous with Law in practical terms. Illustratively, in the Northern part of Nigeria, when a man steals, his hand is been cut off, regardless of how insignificantly equivalent to the punishment is to the committed crime; but it is morally right and the law against stealing is adhered to in their society. Unlike in the Southern part of Nigeria, wherein such punishment would be seriously condemned, and a lesser grievous punishment would be sought. So, it is well illustrated that natural law is inherent in mankind which is made manifest through their laws; do it is indeed safe to say that natural law consist of law and morality. Additionally, based on human reason, natural law is objectively valid as it differs based on diverse perspectives.

2.2.2 Positivism School Of Thought

The Positivist Law Theory isn't only an offshoot but a reaction to the Natural Law theory. In the essence this theory countered the moral aspect of law (Ought Proposition) by examining law in abstract, from morality; thereby emphasizing on the law as being made by a person in authority or power.

This school of thought is often associated to John Austin; however there are other propounders like: Jeremy Bentham, Hans Kelson, H.L.A.Hart, Joseph Raz, etc.⁷⁹These schools of theory believe that the validity of law is not determined by justice, morality or any other normative principle, rather Law is said to be valid when it is properly formed in accordance to the recognized rules of

⁷⁸Jurisprudence and Legal Theory, 2nd Edition; Chris C. Wigwe, SAN. at p.103-104

⁷⁹Jurisprudence and Legal Theory, 2nd Edition; Chris C. Wigwe, SAN. at p.103-104

the society. These positivists see the tenet of morality in law as godly, therefore in criticism, upheld that laws must be in abstract from law.

John Austin's view is that law must be command by a sovereign who is a un -commanded commander; and these commands must be enforced by sanctions; and finally the sovereign must be one that is obeyed by the majority. Kelson believes that laws can't be traced to a superhuman source like God; rather laws are hierarchical in the sense that laws are traced to a Grundnorm.

Hart on his part in concurrence with his fellow positivists, believed that laws are commands of human; and there is no connection between law and morality as Law is what it is and not what it ought to be. However, Positivists like Joseph Raz in the contrary believed that there is a connection between Law and morality but morality shouldn't be the basis for its validity.

David Hume in accordance, criticized morals based on abstract principles; and further stated that things that are regarded as relevant to man that always put in considering when determining his interest.⁸⁰ Additionally, morals and passions should be considered in areas of ethics, not morals and reasons. Therefore, the argument of this theory of law is that law is distinct of morality and it is valid based on enactment of legitimate authorities and through legal processes or procedures.

2.2.3 Theory Of Compensatory Damages

This is a fundamental principle in both Law of contract and Law of Tort which tends to reestablish an injured party to the position they would have been in, if only the occurrence of the wrongful act hadn't taken place. Compensatory damages are monetary awards by the court⁸¹ which aims to only

⁸⁰Jurisprudence: Mainstream, Modern, Millennial-African and the Pure Inspiration Theory of Law; Emeka Ozo Umeh, at p.50-56.

⁸¹*Shell Petroleum Development Company Nigeria Ltd v. Tiebo VII (2005) 9 NWLR (Pt. 931) 439*

restore the plaintiff in a law suit;⁸²by placing a burden of proof on the plaintiff to prove the actual (medical expenses, property damage, etc.) or non- economic losses (emotional distress, pain and suffering) incurred to the court.⁸³

Under contract law, payment of damages is often seen as a remedy to the injured party rather than a punishment to the contract- breaker (defendant).⁸⁴Only in Tort cases, that the court often mark their disapproval of the defendant's conduct by awarding damages in the excess of the plaintiff's loss.⁸⁵However, if the conduct happens to amount to both a breach of contract and a tort, punitive damages can be incurred, if the claim is framed under tort.⁸⁶But, where the pecuniary damage suffered by the plaintiff isn't commensurate to the compensatory damages, punitive damages is introduced.⁸⁷

2.2.4 Efficient Breach Theory

Efficient Breach Theory is a legal theory in contract law with some embodiment of economic elements, wherein a party discretionally breaches a contract and in return for the breach, offers to pay damages as a result of the breach because the monetary compensation is less strenuous than compared to the performance of the contract.

Efficient Breach Theory could be referred to as the economic analysis of contract law, which is called "Freedom of Contract". A principle wherein voluntary exchange is freely permitted in order to maximize value. Furthermore, exchange in this context, is such that increases the utility of both

⁸²To the exclusion of punishing of the defendant (which is the role of punitive damages); *Robinson v. Harman* (1848)

⁸³Section 131(1) of Evidence Act 2011

⁸⁴The Law of Contract, 5th Edition, W.T. Major. M&E Handbooks 1978.at p.208; *Shell Petroleum v. Tiebo VII* (2005)

⁸⁵*Cassell &Co. Ltd. v. Broome* (1972) A.C.1027.

⁸⁶*Drane v. Evangelou* (1978) 2 ALL E.R.437; An Outline of the Law of Contract, 2nd Edition, Treitel, Butterworths 1979 at p. 326 - 327.

⁸⁷*Addis v Gramophone Co* [1909] AC 488

the parties.⁸⁸ A more analyzed definition was given to this theory by Black's Law Dictionary⁸⁹: as the view that a party should be allowed to breach a contract and pay damages, if doing so would be more economically efficient than performing under the contract.

This theory is usually enforced in commercial contracts whereby economic consideration may be paramount. So the court has to weigh the cost of performance which can be the economic benefits of breaching the contract and the benefit of breaching the contract. There is a motion of criticism about this theory with regards to allowing contractual parties to breach contracts without consequences. This motion has to be cleared as it only allows the party to breach a contract that seems more economically advantageous when compared to performing the contract.

However, application of this theory in matrimonial cases seems to encounter difficulties as the court stressed that "Marriage Dissolution isn't a commercial transaction".⁹⁰ Subsequently, in a breach of marital agreement, although, the court enforced specific performance of agreed contractual terms of the elite couple; it still emphasized on the fact that "family obligations can't be reduced to cost benefit analysis".⁹¹ So, drawing inference from the above examined cases, it is well established that Nigerian Courts doesn't enforce this theory of "Efficient Breach" in matrimonial cases on the ground of "breach-bases". The reason behind this is because marriage in Nigeria has a dual personality- a contractual nature and; a sacramental nature⁹² which upholds not only legality but also morality.⁹³ So, due to this unique nature of marriage in Nigeria, some Nigerian customary or religious law view the union of marriage as one which ought to be indissoluble which

⁸⁸See: Contract Cases and Materials, third edition, H.G.Beale; W.D.Bishop; M.P. Furmston. Butterworths 1995 , at p. 71-78

⁸⁹Black's Law Dictionary, Eleventh Edition, at p.629

⁹⁰*Chief Jolapamo v. Ms. Otti LD/3034LM/2022*

⁹¹*Ugbah (2025) LPELR-8173(SC)*

⁹²Can.1055; Can.1059 of The Code of Canon Law; Ar Rum 30: 21-22 of the Quran

⁹³Adultery claim under Section 15(2) of Matrimonial Causes Act; Section 387& 388 of Penal Code.

is supported by reconciliation?⁹⁴ Therefore, since marriage contract can't be dissolved as a commercial transaction; it can on the other hand be dissolved as a consensual settlement.⁹⁵ This can be vividly seen in succession and property rights which requires fair distribution of assets;⁹⁶ and protection of the welfare of the principle members of the family (children of the marriage) in terms of custody;⁹⁷ or Restitution which includes dowry refund especially under Igbo Customary Law.⁹⁸

2.2.5 Deterrence Theory

Deterrence Theory is a theory under criminology that suggests the threat of punishment can prevent people from committing crimes by ensuring that the cost of commission outweigh the benefit accrued from the crime. It is categorized into two; namely:

1. General Deterrence: focuses on the society at large; thereby punishing the offenders as a way to set an example to deter the society for indulging in a similar act.
2. Special Deterrence: focuses more on the individual offender rather than the society at large, wherein the offender is punished severely as a way to prevent further commission of the crime or act by the person.⁹⁹

The Jurisprudential view of this Theory expressly states that people are motivated fundamentally to obtain pleasure and avoid pain. Since criminal justice system contributes to the happiness of the society; so the lesser the crimes in the society, the higher the amount of happiness in the society.¹⁰⁰

⁹⁴.Al-Baqarah 2:224 of the Quran; Section 11 -14 of Matrimonial Causes Act; 2 Corinthians 5:18-21 of the Bible;

⁹⁵*Chief Jolapamo v. Ms. Otti (ibid)*

⁹⁶Section 72 of Matrimonial Causes Act, 1970

⁹⁷ Section 1 & 69 of Child's Right Act, 2003

⁹⁸Marriage and Divorce Law, Emeka Chianu, 2023, at p. 57- 4.03; *Egri v. Uperi (1973) NSCC 584*.

⁹⁹ <https://www.simplypsychology.org/deterrence-theory-criminology.html>, accessed on 24th June, 2026.

¹⁰⁰ On Crimes and Punishment: Cesare Beccaria; (1764); Introduction to the Principles of Morals and Legislation: Jeremy Bentham; (1830)

1. Cesare Bonesana di Beccaria stated the three features of Deterrence Theory to include: ¹⁰¹
 Certainty: which ensures that the offenders must be aware of the probability and risk of being caught.
2. Severity: the punishment apportioned to the crime must be strong enough to outweigh the pleasure derived from the commission of the crime
3. Swiftmess: entails that the punishment should be one that would be quick or fast to connect the crime and its consequences vividly in the mind of the offender.

This theory majorly applied in Nigeria Criminal System depending on the nature of the crime; or applicable statute with regards to the crime. This is implemented through the following measures:

1. Imprisonment: detention of the offender in a prison custody for felonies or misdemeanor

¹⁰²

The court has the power to remand a person in prison custody based on the nature and seriousness of the offence for probable cause to abscond the offender for further commission of the crime. ¹⁰³

2. Fines: the monetary payment stipulated by the court or a statute to be paid by the offender to the government as a penalty as a committed offence. ¹⁰⁴

It is applied as an alternative for imprisonment; or alongside imprisonment to serve as a stronger deterrence. It is often applied in simple offences.

3. Death Sentence: the highest deterrence measure for felonies (capital offence) whereby a death sentence is issued by the court against the offender for the offence committed. ¹⁰⁵

¹⁰¹ On Crimes and Punishment:(ibid)

¹⁰² *COP v Reigels (1923) 4 NLR 104;*

¹⁰³ S.294; 297 ACJA 2015

¹⁰⁴ S.17 Criminal Code 1990; S.72, Penal Code Act

¹⁰⁵ S.402, ACJA 2015

4. Caning: It is often applied in simple or misdemeanors offences. It is often applied along side the main offence as a deterrence.¹⁰⁶
 5. Plea Bargain: this is a monetary negotiation agreement between the criminal defendant and the prosecutor after a plea of guilty has been entered against the criminal defendant, usually as a lesser punishment.¹⁰⁷
 6. Forfeiture of Property: the seizure of the offender's property; especially lands or buildings by the court or Government for commission of a crime.¹⁰⁸
 7. Deportation: the expulsion of an offender from the domicile country back to the country of origin.¹⁰⁹
 8. Award of Cost: this can be known as compensation which is issued against the offender by the court, to pay additional costs apart from the penalty for the crime, in order to properly compensate the affected party. However, it is usually discretionary.¹¹⁰
 9. Award of Damages: this is also known as punitive damages, which is awarded by the court to restore the especially in cases whereby the compensation issued by the court isn't sufficient when compared to the loss incurred by the affected party.
- Similarly, some torts or crimes committed in marriage has the deterrence punishment attached to them by statutes. For instance: adultery;¹¹¹ marital rape;¹¹² enticement of a married woman;¹¹³ et.c.

¹⁰⁶ S.18, Criminal Code 1990; S.77, Penal Code Act

¹⁰⁷ S.270-277, ACJA 2015.

¹⁰⁸ S.333-346, ACJA 2015.

¹⁰⁹ S.439-451, ACJA 2015.

¹¹⁰ S.78, Penal Code Act; S. 319-325, ACJA 2015

¹¹¹ S.387-388, Penal code Act

¹¹² S.357, Criminal Code 1990; S. 282(d) Penal Code Act

¹¹³ S. 383, Penal Code Act

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CONTRACTING MARRIAGE IN NIGERIA AND PUNISHMENT FOR BREACH

3.1. Legal Framework for Contracting Marriage in Nigeria

This could be referred to as the compilation of Nigerian laws that regulates marriage contracts in Nigeria. However, it is noteworthy that this legal framework is limited due to Nigeria Pluralism System which is inclusive of customary and Islamic laws which aren't mentioned herein.

3.1.1. The 1999 Constitution of the Federal Republic of Nigeria (as amended)

The 1999 constitution of Nigeria as amended may be referred to as the grundnorm in the context of hierarchy of Nigeria laws.¹¹⁴ The constitution as a legal document for contracting marriage contracts in Nigeria, doesn't explicitly regulate marriage contract; however, it only made provisions for foundational legal principles that guides marriage laws in Nigeria.¹¹⁵

Furthermore, the Constitution has contributed immensely in Nigeria Marriage contracts; this could be seen in the enactment of the major Nigeria Marriage Laws, (Marriage Act, Matrimonial Causes

¹¹⁴ Preamble of the 1999 Constitution of Nigeria as amended.

¹¹⁵ Section 29(4)(b) of the 1999 Constitution as Amended

Act) which is a constitutional right granted to the National Assembly to make laws.¹¹⁶ Due to the *sui generis* nature of marriage, the constitution allows only the Federal Legislative house to regulate it.¹¹⁷ Most importantly, the constitution ensures the Marriage Laws aren't discriminatory, in other words, favorable or bias towards any gender, or religion or ethnicity.¹¹⁸ With regards to religion and custom, the constitution provides rights to contract marriages under religious and customary laws.¹¹⁹ which is vividly illustrated by Christian Church Marriages and Customary Marriages(inclusive of Islamic Marriages).¹²⁰

The constitution furthermore protects individuals from customs or traditions repugnant to natural justice such as: drinking corpus bathing water to prove innocence, sharia punishments that amounts to torture (flogging) etc. by making provisions for their right to life, and human dignity.¹²¹ Then, in terms of Matrimonial disputes, each spouse has a constitutional right of fair hearing¹²² and the court is equally restricted to giving retrospective punishment which is unconstitutional.¹²³

3.1.2 The Marriage Act CAP. M6 LFN 2004

The Marriage Act is both a primary legislation and a legal foundation for statutory marriage contracts in Nigeria, which comprises of the preparatory, solemnization and registration of marriage contract in Nigeria; as well as the invalidities, offences and penalties associated to marriage contracts in Nigeria.

¹¹⁶ Section 47 & Section 4 of the 1999 Constitution as Amended

¹¹⁷Item 61, Second schedule of the 1999 Constitution as Amended

¹¹⁸ Section 42 of the 1999 Constitution as Amended

¹¹⁹ Section 38 of the 1999 Constitution as Amended

¹²⁰ Can.1055 & 1059 of The Canon Law; Ar Rum 30: 21-22 of The Quran (ibid)

¹²¹ Section 33; Section 34 of the 1999 Constitution as Amended

¹²² Section 36(1) of the 1999 Constitution as Amended

¹²³ Section 36(1) of the 1999 Constitution as Amended

Furthermore, this Marriage Act repealed three statutes, namely: The Marriage Ordinance; The Marriage Proclamation, and The Foreign Marriage Ordinance 1913.¹²⁴ Marriage as a contract starts with the two parties of single status and a contractual age, who are bounded by their consent to contract a marriage in a licensed place by a licensed or authorized officer, which is evidenced by a marriage certificate to the exclusive of others to enjoy the benefits attached to the marriage.

Marriage Act provides for single status of parties; and this is extended to the dissolution of any existing marriage contract before venturing into a new one; and they are also restricted from contracting any marriage upon existence of any already established marriage contract.¹²⁵ With respect to the contractual age of parties, Marriage contracts involving minors are void, else adequate consent is been secured. The Act went extra mile in recognition of parents or guardians whose signature of consent are needed for consent marriage for a minor.¹²⁶

However, it is important to note that the age regarded as minor in this Act is below 21 years of age happens to be different from the child's right Act.¹²⁷ The solemnization of Marriage is a condition precedent for marriage contract as celebration of Marriage by an unauthorized person or place would automatically render the contract void in ab initio.¹²⁸ Precedingly, for the solemnization of Marriage contract to be legally recognized, it must be registered within 60 days of solemnization, and be evidenced by an issuance of a marriage certificate to the parties of the marriage contract.¹²⁹

This marriage contract must be witnessed by at least two persons; and prior to the solemnization of the marriage contract, a notice of the marriage must be published three months to the published

¹²⁴ Section 36(1) of the 1999 Constitution as Amended

¹²⁵ Section 39 of Marriage Act, Cap M6 LFN 2004

¹²⁶ Section 18 of Marriage Act, Cap M6 LFN 2004

¹²⁷ Section 18 Marriage Act (ibid); Section 277 of Child's Right Act 2003

¹²⁸ Section 33(2) (a) (d) of Marriage Act, Cap M6 LFN 2004

¹²⁹ Section 32; Form E in the First Schedule of Marriage Act, Cap M6 LFN 2004

date. This is to create public awareness of the marriage intention between the parties, which prevents occurrence of unlawful Marriages.¹³⁰ Marriage Act furthermore resolved the controversial issue on the validity of native law marriage prior to any existing statutory law marriage is valid, but if the statutory marriage pre- existed the native marriage when the statutory marriage is render void.¹³¹

Other Marriages that were highlighted on by the Marriage Act, includes:

1. Foreign marriages: A marriage which occurs between a Nigerian citizen and a foreigner, and is validly contracted outside Nigeria before a marriage officer in his office; would be regarded to as a valid marriage contracted in Nigeria before a registrar in the registrar's office.¹³²
2. Fictitious Marriages: A marriage whereby one party has the knowledge of the marriage being void; goes ahead with the celebration of such marriage; while the other party is ignorant of that fact attracts 5 years imprisonment.¹³³
3. Impersonation Marriage: A fraudulent Marriage conducted under a false name, description or impersonation of someone else with the sole aim of deceiving the other party is liable for five years imprisonment.¹³⁴

Proceedingly, there happen to be some common practices in respect to celebration of Marriage, which the Marriage Act considers a punishable offence. Celebration of Statutory Marriage between a single person and a married person, wherein the married person hasn't legally dissolved the previous marriage before moving into another; and a single party has knowledge about it. This

¹³⁰ Section 26; Section 7; Form A in the First Schedule of Marriage Act, Cap M6 LFN 2004

¹³¹ Section 35 of Marriage Act, Cap M6 LFN 2004

¹³² Section 49 of Marriage Act, Cap M6 LFN 2004

¹³³ Section 45 of Marriage Act, Cap M6 LFN 2004

¹³⁴ Section 44 of Marriage Act, Cap M6 LFN 2004

attracts five years imprisonment.¹³⁵ Spouses who makes up a false certificate, affidavit, declaration, license or document for marriage intentionally, would be liable for five years imprisonment.¹³⁶

Anyone especially family members or relatives that falsely claims that important consent which is needed for the marriage wasn't gotten; in order to hinder the celebration of the marriage by pretense intentionally, is liable for two years imprisonment.¹³⁷ Any marriage that is intentionally performed or witnessed by an unqualified marriage officer or minister who isn't dully qualified to perform marriage celebration, commits an offence which attracts five years imprisonment.¹³⁸

Any negligent act by a marriage officer or minister with respect to failure of filling up or transmitting certificate of Marriage to the registrar office, is liable for two years imprisonment.¹³⁹

Any person is contracting a statutory marriage, however is already married to another different person under customary law, has committed an offence of bigamy and is liable to five years imprisonment. Likewise, a spouse who is already marriages statutorily, however goes ahead to contract a new marriage under the customary law is equally liable for bigamy which is five years imprisonment.¹⁴⁰

Another unlawful common practice is the marriage of a person below the age of twenty-one years which is regarded by this Act as a marriage to minor. So far as the party of the intended marriage isn't a widow or widower, and is under twenty-one years of age, a written consent must be gotten from neither the father, or the mother or the guardian. Therefore, in a case whereby a person has

¹³⁵ Section 39 of Marriage Act, Cap M6 LFN 2004

¹³⁶ Section 40 of Marriage Act, Cap M6 LFN 2004

¹³⁷ Section 41 of Marriage Act, Cap M6 LFN 2004

¹³⁸ Section 42 of Marriage Act, Cap M6 LFN 2004

¹³⁹ Section 43 of Marriage Act, Cap M6 LFN 2004

¹⁴⁰ Section 46; 47 of Marriage Act, Cap M6 LFN 2004

knowledge of this written consent, but intentionally marries or assists or procures this marriage, such person is liable to two years imprisonment.¹⁴¹

Another peculiarity of Marriage Act is the legal drafting of forms of Marriage contract forms; such as Notice of Marriage, Form of Attestation, Registrar's certificate, Special License of Marriage, Certificate of Marriage.¹⁴²

3.1.3 Matrimonial Causes Act 1970 (as amended) CAP. M7 LFN 2004

The Matrimonial Causes Act begins from where the Marriage Act stop which is after the Marriage contract has been signed, sealed and delivered by its solemnization, registration and evidence given in documentary form. The institution of Matrimonial Causes commences.¹⁴³ The Matrimonial Causes Act became the principal framework regulating matrimonial disputes in statutory marriage contracts in Nigeria from the year 1970 till date.

Prior to the enactment of The Matrimonial Causes Act of 1970, matrimonial disputes were regulated by: The Matrimonial Causes Act 1950 of England; and the Matrimonial Causes Act (Cap. 220) Laws of the Federation of Nigeria and Lagos 1958. The Matrimonial Causes Act of 1970 regulates: Court Jurisdiction in respect to filing of matrimonial suits; Reconciliation; Dissolution of Marriage; Nullity of Marriage; Judicial Separation; Facilitation of Marriage; Intervention of Attorney General; Power of the Court in respect to Maintenance, Custody and Settlement; Acceptable Evidence and Appeals in respect to Matrimonial suits. Subsequently, this Act conferred jurisdiction in regards to matrimonial suits upon the High Court of any State in Nigeria,¹⁴⁴ and the matrimonial reliefs that can be sought before it under this Act as follows:

¹⁴¹ Section 18 of Marriage Act, Cap M6 LFN 2004

¹⁴² Forms A-F in First Schedule of Marriage Act, Cap M6 LFN 2004

¹⁴³ Section 1 of Matrimonial Causes Act 1970 as amended

¹⁴⁴ Section 2 of Matrimonial Causes Act 1970 as amended

proceedings for dissolution of marriage; Nullity of void and voidable Marriages; Judicial Separation; Restitution of Conjugal Rights; Jactitation of Marriage; proceeding for declaration of validity of marriage; Proceedings for maintenance, settlement, damages for adultery, custody of children, etc.¹⁴⁵

Matrimonial Causes Act of 1970 indeed brought notable changes to Nigerian matrimonial dispute such as:

1. The Doctrine of Irretrievable Breakdown of Marriage which should be backed up with grounds that portrays the effectiveness and existence of this doctrine in a Dissolution of a matrimonial suit for it to succeed in court.¹⁴⁶
2. The introduction of the Two Years Exception Rule in instituting dissolution processes before the court. Originally, divorce cases aren't permitted within two years of marriage. But the M.C.A. creates an exception in cases wherein a spouse of that marriage is going through exceptional hardship and exceptional derivation, petition for dissolution of marriage can be brought through the leave of court.¹⁴⁷
3. Conferment of General Powers¹⁴⁸ and Discretionary Powers to the Court in regards to Reliefs of Maintenance;¹⁴⁹ Custody,¹⁵⁰ and Settlement of Property.¹⁵¹
4. Welfare of the Children of the Marriage is of paramount consideration in respect to Custody; maintenance and parentage.¹⁵²

¹⁴⁵ Section 114 (a- d) of Matrimonial Causes Act 1970 as amended

¹⁴⁶ Section 15(1) of Matrimonial Causes Act 1970 as amended

¹⁴⁷ Section 30 of Matrimonial Causes Act 1970 as amended

¹⁴⁸ Section 73 of Matrimonial Causes Act 1970 as amended

¹⁴⁹ Section 70 of Matrimonial Causes Act 1970 as amended

¹⁵⁰ Section 71 of Matrimonial Causes Act 1970 as amended

¹⁵¹ Section 72 of Matrimonial Causes Act 1970 as amended

¹⁵² Section 57 of Matrimonial Causes Act 1970 as amended

5. Reconciliation was highly recommended compared to Litigation in respect to Dissolution Proceedings. This is obviously evidenced in a reconciliation certificate; the interference of the judge; and marriage conciliator.¹⁵³
6. Void Marriages which are marriages unknown to parties bestows no status of Marriage on them; ie: pre- existing marriage, consanguinity and affinity, fraud, mistake, duress, minor age, mentally incapable to enter into the Marriage contract, etc.¹⁵⁴ While Voidable Marriages are considered to be valid, but they are nullified due to certain defects; ie: incapability to consummate, medical deficiency, venerable disease in communicable form, pregnancy for another.¹⁵⁵
7. This Matrimonial Bars is inclusive of:
 - a. Absolute Bars (Condonation, connivance, Collusion) these bars restricts a petitioner from instituting a petition; and these bars serves as grounds of defence for the respondent.¹⁵⁶
 - b. Discretionary Bars gives the court the discretion to grant or refuse a petition of Dissolution of marriage by a petitioner who committed adultery, or willfully deserted the respondent or exhibit intolerable conducts to lead to the existence of the petition.¹⁵⁷

Ultimately, this Act made provisions for procedural regulations which should be seen in its transitional and miscellaneous parts. (part IX & X); and Second Schedule.

3.1.4 Matrimonial Causes Rules 2004

¹⁵³ Section 11& 14 of Matrimonial Causes Act 1970 as amended

¹⁵⁴ Section 3 of Matrimonial Causes Act 1970 as amended

¹⁵⁵ Section 5 of Matrimonial Causes Act 1970 as amended

¹⁵⁶ Section 26&27 of Matrimonial Causes Act 1970 as amended

¹⁵⁷ Section 28 of Matrimonial Causes Act 1970 as amended

The Matrimonial Causes Rules are procedural regulations that are enacted pursuant to the principal legislation regulating matrimonial causes in Nigeria (The Matrimonial Causes Act 1970). The Matrimonial Causes Rules prescribes how applications related to the dissolution and annulment of marriages are to be made, processed, and heard in court.¹⁵⁸

The Matrimonial Causes Rules are also known as rules of the High Court made by the Chief Judge by virtue of delegated legislation,¹⁵⁹ to aid in enforcement of the matrimonial Causes or petitions arising from Matrimonial issues. However, The Matrimonial Causes Rules of 2022 repealed the Matrimonial Causes Rules of 1983, thereby making the enforcement of matrimonial suits less complicated with notable improvements, herein as follows:

Simplifying its structure down to five Orders in the Rules;¹⁶⁰ Inclusion of modern technology by complicating organizing requirement for petitions and answers;¹⁶¹ giving guidelines for particulars needed in instituting matrimonial suits;¹⁶² ensuring the proper service of process both manually and electronically.¹⁶³

To ensure sufficient passage of justice and time management, the Matrimonial Rules placed time limits for institution of proceeding to prevent delays.¹⁶⁴ Furthermore, the introduction of other alternative dispute resolutions like mediation and reconciliation, thereby enabling parties have enough option for resolving matrimonial disputes apart from litigation.¹⁶⁵ As the Matrimonial Causes Rules ensures orderly, fair, and efficient legal process for resolving irreversible marriage disputes in court. It doesn't *stricto sensu* punish breach of marriage contract in criminal perspective

¹⁵⁸ Order 3 & Order 4 of Matrimonial Causes Rules 2004

¹⁵⁹ Section 236 of The 1999 Constitution of Nigeria as amended.

¹⁶⁰ Order V & Order VI of Matrimonial Causes Rules 2004

¹⁶¹ Order V of Matrimonial Causes Rules 2004

¹⁶² Order VI of Matrimonial Causes Rules 2004

¹⁶³ Order I, Rule 8; Order V, Rule 29 & 30 of Matrimonial Causes Rules 2004

¹⁶⁴ Order II, Rule 1 & 2 of Matrimonial Causes Rules 2004

rather it guides the court in issuing out some actions which is evidenced in: Dissolution of the Marriage contract;¹⁶⁵ Maintenance \financial support for the spouse or children;¹⁶⁶ issuance of Custody and Access;¹⁶⁷ Settlement of Family property and Cost of Litigation.¹⁶⁸

3.1.5. Evidence Act 2011(as Amended in 2023)

The Evidence Act of 2011 (as amended in 2023) is the current Nigeria legislation that regulates the admissibility, relevance, and credibility of Evidence whether: (documentary, oral, written or electronically obtained) tendered during court proceedings before a court of Law. Furthermore, this law can be seen as a supplemental law with regards to other laws that regulates the contract of marriage, as it aides in the evidential framework for proving or disproving claims during matrimonial disputes.

A peculiar feature of this Amended Act that is worth noting is its key improvement in areas like: regulation of electronic evidence, admissibility of digital signatures, updating the definitions of major terms like, "document", "evidence", " computer".¹⁶⁹

The Evidence Act serves as a vital legislation regulating marriage contracts with respect to matrimonial causes, different categories of evidence can be used to prove matrimonial Causes in court; namely: Oral Evidence also known as patrol or viva-voce testimony. It can be used for proving Customary Marriage by witnesses.¹⁷⁰

¹⁶⁵ Order IV, Rules 1-4 of Matrimonial Causes Rules 2004

¹⁶⁶ Order XVII, Rules 30- 34; Order XIV, Rules 7-16 of Matrimonial Causes Rules 2004

¹⁶⁷ Order XIV, Rules 20-24 of Matrimonial Causes Rules 2004

¹⁶⁸ Order XIV of Matrimonial Causes Rules 2004

¹⁶⁹ Section 258 of Evidence Act 2011(as amended in 2023)

¹⁷⁰Section 126; 206 of Evidence Act 2011(as amended in 2023)

Direct Evidence gotten from personal knowledge of the fact in issue, can be implied in proving willfully and persistent refusal to consummate the Marriage.¹⁷¹

Hearsay Evidence obtained from another person's testimony rather than a personal testimony.¹⁷²

This evidence is used in matrimonial issues of paternity and rights of inheritance of a child to real or personal property, statements by a person related by blood (a family member) who has knowledge about the relationship between such persons whether blood, marriage, or adoption is relevance.¹⁷³ Likewise in Opinion Evidence with regards to the nature of relationship between spouse, whether is mere cohabitation or lawfully married.¹⁷⁴

Documentary Evidence is also referred to as *res ipsa loquitur*, as it is the best evidence because it speaks for itself, and it can be used to prove the validity of a marriage contract in nature of a marriage certificate.¹⁷⁵ Circumstantial Evidence gotten from various circumstances which when put together points at one irresistible conclusion.¹⁷⁶ And it could be used in proving adultery claims in Matrimonial Causes.

Character Evidence applies to civil cases with exceptions, one of which is issuance of damages by the court, in an action for breach of promise to marriage, evidence of a good character can mitigate the amount of damages incurable by the defendant and evidence of bad character can stand as a substantive defence as well.¹⁷⁷ However, not all Facts that needs to be proven, facts of common knowledge which should not be reasonably open to question, similarly, the presumption of

¹⁷¹ Section 126 of Evidence Act *ibid*; Per Ayoola JSC in *Ahmed v.State* (2001) 18 NWLR (pt.746)623 at 643.

¹⁷² Section 37 of Evidence Act 2011(as amended in 2023); Per Nnaemeka Agu JSC in *Utteh v.State* (1992)2 NWLR(Pt.223) 257 at 301

¹⁷³ Section 44 of Evidence Act 2011(as amended in 2023)

¹⁷⁴ Section 75 of Evidence Act 2011(as amended in 2023)

¹⁷⁵ Definition of "Document" in Section 258 of Evidence Act 2011(as amended in 2023)

¹⁷⁶ Section 167 of Evidence Act 2011(as amended in 2023)

¹⁷⁷ Section 79 of Evidence Act 2011(as amended in 2023)

consummation of marriage immediately after a marriage contract was been established, needs no prove in court because it is a fact of common knowledge in Nigeria society.

Similarly, under legal presumptions; any evidence of cohabitation between a male and a female presented before the court to establish a valid and subsisting marriage between the persons stands as an evidence buttressing presumption of marriage.¹⁷⁸ If a spouse disappears without any traces or information for seven years, portrays a presumption of death to the court.¹⁷⁹ In respect to paternity and legitimacy in a marital dispute, any child born during the subsistence of a valid marriage or 280 days after the dissolutions of the marriage contract is presumed to be the child of the marriage. (the man)¹⁸⁰

Spouses of a valid marriage are the husband and wife of valid marriage under the Marriage Act, Islamic law or Customary law.¹⁸¹ Under the Evidence Act, spouses are competent witnesses to appear before a court to testify.¹⁸² Spouses of a valid marriage are not competent witnesses under criminal proceedings, except with regards to: sexual offences, offences against property of the other spouse, and marital or domestic violence between spouses.¹⁸³ Corroborative Evidence which are strong additional evidence required in proving the claim of adultery in cases of divorce; and civil actions on breach of promise of marriage.¹⁸⁴ The burden of prove in a matrimonial causes rests on the petitioner who instituted the action.¹⁸⁵ Standard of prove generally in civil cases is based on the balance of probability,¹⁸⁶

¹⁷⁸ Section 166 of Evidence Act 2011(as amended in 2023)

¹⁷⁹ Section 164 of Evidence Act 2011(as amended in 2023)

¹⁸⁰ Section 165 of Evidence Act 2011(as amended in 2023)

¹⁸¹ Definition of "Husband and Wife" in Section 258 of Evidence Act 2011(as amended in 2023)

¹⁸² Section 175 of Evidence Act 2011(as amended in 2023)

¹⁸³ Section 182 of Evidence Act 2011(as amended in 2023)

¹⁸⁴ Section 197 of Evidence Act 2011(as amended in 2023); *Ejim v. Ejim* (1968) *NLR* 35

¹⁸⁵ Section 131 of Evidence Act 2011(as amended in 2023); *Nanna v. Nanna*(2006)3*NWLR*(pt. 766) 1 at 29-30

¹⁸⁶ Section 134 of Evidence Act 2011(as amended in 2023)

However, matrimonial causes happens to be an exception, as its standard of prove is based on the satisfaction of the court.¹⁸⁷ It is worth noting that the satisfaction of the court in matrimonial cases do vary, ie: in adultery as ground for dissolution of marriage, reasonable satisfaction of the court is preponderance of Evidence.¹⁸⁸

3.2. Institutional Framework for Contracting Marriage

3.2.1. Marriage Registry

Marriage Registry in Nigeria are regulated by the Marriage Act; and operated by an authorized official known as "Registrar".¹⁸⁹ The Marriage Registry is a marriage contracting institution whereby marriages are civilly celebrated, and are been conferred upon it a valid nature without the need for any other civil or religious rites.¹⁹⁰

This is commenced by obtaining the registrar's license or a special license from the Minister of Internal Affairs, as an alternative for marriage in a licensed place of worship. The Registrar of the Marriage Registry puts up a marriage ban to the public for three months, as a means of notification to the general public of parties to proposed marriage contract.¹⁹¹ Spouses who are atheist or pagans who are averse to vowing with any religious object like Bible or Koran, is entitled to a simple affirmation before the court.

¹⁸⁷ Section 82 of Evidence Act 2011(as amended in 2023)

¹⁸⁸ Per Agube JSC in *Alabi v. Alabi* (2007) 9 NWLR (pt 1039) 297 at 336.

¹⁸⁹ S. 2 of Marriage Act, Cap M6. LFN 2004

¹⁹⁰ S.27; S. 34 of Marriage Act, Cap M6. LFN 2004; *Ijoma v Ijoma* (2009)12NWLR (PT 1156)

¹⁹¹ S. 7; S.12 of Marriage Act, Cap M6. LFN 2004; *Awobokun v. Adeyemi* (1970) NSCC 260; (1970)1 NLR 308

This is an avenue for objection or consent of the public with regards to the proposed marriage published on the notice book at the marriage registry.¹⁹² Caveats against registration and celebration of marriage; or the minister's license to marry are allowed in written form in the Marriage Registry. However, an exception of verbal notice is made for illiterate person.¹⁹³ The Marriage Registry celebrates marriages in open doors for 10am to 4pm alongside two witnesses in the presence of the registrar.¹⁹⁴

Apart from issuing marriage license for celebration of marriage, the Marriage Registry goes ahead to registrar marriages in a Marriage Register Book.¹⁹⁵ Issues marriage certificate to newly married couples as an evidence of a valid marriage before the law. The Marriage Registry goes ahead to maintain official record of conducted marriages which can serve as a documentary evidence for prove of validity of marriage. Nevertheless, the Marriage Registry gets licenses to places of worship (churches) for valid celebration of marriage, this enables Marriages celebrated there to be registered in the Marriage Registry and issuance of Marriage certificate to spouses of church marriages.¹⁹⁶ Likewise, the Marriage Registry registers and issues marriage certificate to Marriages conducted.¹⁹⁷

3.2.2. The Courts

The court is an institutional framework for contracting Marriage in Nigeria in different dimensions. However, by virtue of the Matrimonial Causes Act, only a High Court in Nigeria has the jurisdiction to handles matrimonial cases. The High Court equally has the right to dissolve Marriages under the Act that happens to be broken down irretrievably under certain stipulated

¹⁹² S.14; S.16 of Marriage Act, Cap M6.LFN 2004

¹⁹³ S.14 of Marriage Act, Cap M6.LFN 2004

¹⁹⁴ S.27 of Marriage Act, Cap M6.LFN 2004

¹⁹⁵ S.30(1)of Marriage Act, Cap M6.LFN 2004

¹⁹⁶ S.26 of Marriage Act, Cap M6. LFN 2004; *Chukwuma v. Chukwuma* (1996)1NWLR (PT 426)543.

¹⁹⁷ S.28 of Marriage Act, Cap M6. LFN 2004

grounds by the Act; grant judicial separation, restitution of conjugal rights, jactitation of marriage amongst other matrimonial suits.¹⁹⁸ Nullification of a valid statutory marriage based on existence of a subsisting Customary marriage.¹⁹⁹

The High Court has the right to grant compensatory reliefs to the aggrieved parties in a matrimonial disputes in cases whereby the party suffered due to gross negligence, fraud. This power of the court extends to financial reliefs ranging from maintenance to general or specific damages of any matrimonial causes.²⁰⁰ Other common issues determined by the court includes: issues of domicile that are determined by residence of parties by the court; issues of proxy Marriages.²⁰¹ The court has the power to grant reliefs of settlement of Properties amongst the dissolved couples.²⁰²

The court (high court) alone has the jurisdiction to dissolve the statutory bond of a double-deck marriage by virtue of the Matrimonial Causes Act.²⁰³ The court awards custody of the children under the Marriage Act while considering the welfare of the children during a matrimonial cause before the court.²⁰⁴ Furthermore, Court goes ahead to give room for equal inheritance between the children born prior to the Act marriage and children born in the subsistence of the Act marriage.²⁰⁵

The high court in its inherent power grant injunctions and protective orders in cases of domestic violence or disposal of martial property. The High court has the inherent power to enforce prison terms for marital crimes such as; bigamy, cruelty, marital rape. However, apart from the High Court, the Magistrate Court has the power to grant financial remedies like maintenance only in a matrimonial dispute. .

¹⁹⁸ S.2 of Matrimonial Causes Act, 1970 as amended

¹⁹⁹ *Agbeja v. Agbeja* (1985) 3 NWLR (pt 11) 11C/A.

²⁰⁰ S.70; 73 of Matrimonial Causes Act, 1970 as amended

²⁰¹ *Apt (orse Magnus) v. Apt* (1947) 1 All ER 620; 2 All ER 67

²⁰² S.72 M.C.A; *Chief Jolapamo v. Ms. Otti* LD/3034LM/2022

²⁰³ S.2 (1) M.C.A; *Ohochuku v. Ohochuku*(1960)1 W.L.R.183; (1960) 1 All E.R. 253.

²⁰⁴ *Nzelu v. Nzelu* (1997) 3 NWLR 472; *Akinbuwa v. Akinbuwa* (1998) 7 NWLR, 661.

²⁰⁵ *Abisogun v. Abisogun* (1963) 1 All N.L.R. 237

Customary courts has the power to dissolve Customary Law Marriages only.²⁰⁶ This is often sought when the extra-judicial mode turns out inefficient over the quantum of marriage dowry refundable upon dissolution of marriage especially where the husband refuses to accept it and the wife isn't fee to remarry.²⁰⁷ However, the court may refuse dissolution of a customary law marriage if it would be detrimental to the interest of the Children of the Marriage.²⁰⁸

CHAPTER FOUR

²⁰⁶ S1 Cotton.J.C. The Calabar Marriage Law and Customs,(1905)4 J.R.A.S.427 p.430.; *Oyewolu v. Oyewolu*, pp 258,153-158 of The Customary Law Manual, cited in pg.185 of Family Law by Margaret C. Onokah.

²⁰⁷ *Solomon v. Gbobo* (1974) E.C.S.N.L.R.457

²⁰⁸ *F.Bassey v. E. Isich*(1972) Suit no.43/72. (unreported)

THE ARGUMENT FOR PUNITIVE DAMAGES IN MARRIAGE CONTRACT IN NIGERIA.

4.1. Punishment for Breach of Contract Marriage in Nigeria

The resulting consequences from a breach of contract marriage would be examined under the three marriage contracts in Nigeria. Under Statutory Marriage Contract in Nigeria:

- a. Payment of Damages: The aggrieved party has the right to sue the breached party to pay damages for the wrong incurred as a result of the breach of the contract marriage.²⁰⁹
- b. Dissolution of Marriage: A breach of the stipulated grounds for statutory marriage contract can lead to dissolution of the marriage.²¹⁰
- c. Nullity of Marriage: in cases whereby the marriage is void or voidable by virtue of the law; or a new marriage was contracted during the subsistence of an already valid marriage.²¹¹
- d. Imprisonment term issued by the court for commission of marital crimes like bigamy, domestic violence or marital rape.²¹²
- e. Specific Performance by the court which are inclusive of protective orders and injunctive orders as a result of breach of statutory marriage with respect to domestic violence, payment of maintenance, custody of children or division of property.²¹³

4.2. Application of Punitive Damages in Matrimonial Disputes using America as a case study

²⁰⁹ *Vital Inv. Ltd v. CAP Plc* (2022) 4 NWLR (pt 1820) 205.

²¹⁰ *Bibilari v. Bibilari* (2011) 13 NWLR (pt 1264) 207 C/A.; S.15 of Matrimonial Causes Act, Cap M7.

²¹¹ *Agbeja v. Agbeja* (ibid); S.3;5 of Matrimonial Causes Act, Cap M7

²¹² S.335; 351; 370 of Criminal Code.

²¹³ S. 71; 72; 73 of Matrimonial Causes Act, Cap M7

In light of the argument of inculcating punitive damages into Marriage contracts in Nigeria, America would serve as a yardstick to this purpose. America has a good number of decided cases on punitive damages on Contract

In California, U.S.A., the California Civil Code which covers all civil cases including family law cases made a provision for implementation of punitive damages in matrimonial cases by the courts especially, where there is hidden assets or falsified financials.

Section 3294(a) of the California Civil Code provides as follow: “In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.”²¹⁴

Furthermore, there are matrimonial cases, whereby the court granted punitive damages to the aggrieved parties; In *Tevis v. Tevis* Case,²¹⁵ an American case of inter-spousal immunity in an assault/personal injury case between the wife (plaintiff) Janina Tevis who sued her husband (defendant) Micheal Tevis Jr. on the 14th May, 1973. The trial court stroked it out due to statute bar and the overriding doctrine of inter-spousal immunity. But the appellate court awarded Mrs. Tevis a compensatory damages of \$25,000 and a punitive damages of \$10,000.

In *Donnell v. Donnell* case,²¹⁶ the plaintiff-Mrs. Irene M. Donnell, sued the defendant, Mrs. Emily Nichols Mortimer, who is now Mrs. Emily Nichols Donnell, for alienation of affections of plaintiff's former husband, James R. Donnell. Plaintiff, Mrs. Irene M. Donnell, was married to

²¹⁴ <https://swansonodell.com/can-you-get-punitive-damages-in-a-divorce>, accessed on the 10th of June, 2026.

²¹⁵ *Tevis v. Tevis* (1979) Case

Full Citations: 400 A.2d 1189, 79 N.J. 422 The Supreme Court of New Jersey. Argued on November 13, 1978. Decided on April 5, 1979.

²¹⁶ *Donnell v. Donnell*, 220 Tenn. 169, 415 S.W.2d 127, 24 McCanless 169 (Tenn. 1967)

James R. Donnell on September 4, 1937, in Franklin, Tennessee for twenty-five years, without any separation.

Plaintiff's husband became acquainted with the defendant, who wrote series of affectionate and extremely incriminating letters to him over a period of time from March until June, 1962. This lead to subsequent change in her husband's attitude toward the plaintiff from and after February, 1962--which was about the time the series of letters in evidence began. Subsequently, he filed for divorce on July 6, 1962, obtained it in October 9, 1962; and went ahead to marry the defendant on November 22, 1962.

The appeal court granted certiorari for the appeal and held in affirmation with the judgment of the trial court and the reinstatement of the verdict held by the jury in the trial for payment of punitive damages to the plaintiff alongside \$25,000.000 compensatory damages.

In *Howard S. v. Lillian S. Case*,²¹⁷ a matrimonial action for dissolution of marriage by the plaintiff-Howard against the defendant- Lillian for cruelty; adultery and fraud. And as well seeking for compensatory and punitive damages. Out of four children of the Marriage, the first child is the defendant's child from previous relationship who the plaintiff adopted. Three others were born during the subsistence of their marriages. The last child happens to be a product of the defendant's extramarital affair with an unidentified man.

This vital information was undisclosed from him by the defendant as he lived in deception believing the child to be his until a DNA test was conducted on the child who was three years old. And the plaintiff still suspects the defendant to be in another extramarital relationship with a man. The defendant sued for damages incurred from fraud of undisclosed adultery; money expenses

²¹⁷ *Howard S. v. Lillian S.*, 902 N.Y.S.2d 17, 14 N.Y.3d 431, 928 N.E.2d 399 (N.Y. 2010)

on an illegitimate child, marital investment, equitable distribution of the bulk of their marital property due to defendant's egregious fault; and punitive damages

The Supreme Court denied defendant's motion to dismiss the action and the issue of defendant's egregious fault for purposes of equitable distribution. Then limited the plaintiff's damages to his pecuniary loss in the form of collaborative law process fees. In *Lucarell v. Nationwide Mut. Ins. Co.*,²¹⁸ the Supreme Court of Ohio in this case held that generally, punitive damages aren't recovered in a case of breach of contract, there are exceptional instances where punitive damages can be recovered in a breach of contract suit namely: where the breach in question involves an independent tort, for instance fraud or duress

The conduct in which the claim of punitive damages lays is limited to the harm attributable to the tort, and it must be distinct from the harm caused by the breach of contract. In other words, the general rule for breach of contract cases, is that punitive damages can't be granted by the court. But an exception to that rule is in cases whereby the cause of action that gave right to the breach of contract equally constituted a separate tort and the aggrieved party is capable to prove the damage incurred solely from that independent tort, wherein punitive damages can therefore be granted by the court.

4.3. Argument for award of Punitive Damages in Statutory Marriage Contract in Nigeria

²¹⁸ *Lucarell v. Nationwide Mut. Ins. Co.*, Slip Opinion No. 2018-Ohio-15

Nigerian court has laid emphasizes on punitive damages as damages with intent to punish and deter blame, worth conduct and prevent the future occurrence of that same act in future. Conditions required by Nigerian Courts, for grant of punitive damages is that the conduct of the other party is sufficiently outrageous to merit punishment, in instances like malice, fraud, cruelty, intolerance and blatant disregard of the law.

The general rule for punitive damages is that the cause of action must be brought under tort not contract, and the conduct on which the claim lays is sufficiently deserving of a punitive damages as a punishment.²¹⁹ Additionally, the power of the appellant court in granting punitive damages to the aggrieved party is determined by the prove of actual loss or damages by the aggrieved party, which was suffered for the wrong action of the party in breach, at the trial court.²²⁰

Nigerian court in concurrence with the common law doctrine of contract, prohibits the application of punitive damages and its award in breach of contract cases.²²¹ Subsequently, only damage that are natural and probable consequences of the breach of contract within the contemplation of parties at the time of the contract are awarded. Haven established the fact that Nigerian court recognize punitive damages solely in tortuous cases, to the exclusion of contractual cases.

In *Allied Bank (Nig) Ltd. v. Akubueze Case*²²² Nigerian Court reaffirmed its position on the unrecoverable nature of punitive damages in breach of contract. However, made an exception for recovery of punitive damages in case of breach of promise of marriage because it is similar to tort than contract in substance than in form. But in cases of personal injury, the court still retained its

²¹⁹ *Kabo Air Ltd. v. Mohammed* (2005) 5 NWLR (Pt. 1451) 38(Pp. 78-79, paras. H-B; 80, paras. C-D)

²²⁰ *Uniport v. Nwuzor* (2024) 16 NWLR (Pt. 1965) 551

²²¹ *Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd.*(2000) 12 NWLR (Pt. 681) 393

²²² *Allied Bank (Nig) Ltd. v. Akubueze* (1997) 6 NWLR (Pt. 509) 374

stand for non-recovery of punitive damages only compensatory damages for the injury sustained.²²³

Decisions of court over the years with regards to the prohibition of punitive damages in breach of contractual marriage contract which are coupled with serious tortuous conducts like personal injuries indeed call for a critical legally intervention, as breach of marriage contracts is at a high rise now. There is a need for a serious consideration of inculcating punitive damages in breach of marriage contracts in Nigeria, in order to control the massive perversion of marriage contracts in Nigeria. In light of this consideration, the argument is focusing on America as an yardstick because America and Nigeria share similarities with respect to: practice of common law system; practice of Judicial Precedents; adversarial system of court; Judicial Independence and Constitutional Supremacy in both countries. Despite their similarities with respect to their legal system in enforcement of the law, Nigeria still awards compensatory damages instead of punitive damages like America in breach of marriage contract

Apart from the primary object of compensation which damages grants. The secondary object of damages has been emphasized as one that should punish the defendant for his conduct of inflicting harm on the plaintiff; and this secondary objective is achieved by the court through awarding of punitive, exemplary or retributive damages alongside compensatory damages. This measure would aid the court in passage of logical and equitable justice with respect to cases of breach of marriage contract that have tortuous effect. Thereby, the parties who have suffered two torts; namely: breach of marriage contract and tort of personal injury would be fully compensated under contract and

²²³ *Ediagbonya v. Dumez (Nig.) Ltd. (1986) 3 NWLR (Pt. 31) 753*

monetary punished for their tortuous conduct which maintains the civil nature of damages and at the same time deter the further occurrence of that Act.

Therefore, with the statistical analysis of the alarming increase of Nigerian divorce cases on tortious and criminal conduct of aggressive party in chapter one of this academical explorative, serving as a real evidence; and the American case laws on the application of punitive damages to mitigate the escalation of this bone of contention in their country which should serve as a persuasive precedent to the Nigerian Legislative houses and Judiciary Bodies.

As to foster the need to inculcate punitive damages into civil matters like; breach of marriage contracts with tortious or criminal elements that results to personal injuries (ie: physical, mental, emotional, psychological injuries; or domestic violence)²²⁴

4.4. Rationale for the award of Damages

1. Compensation

The award of compensation is embeddied or affixed in the legal maxim “Restitutio in Intergrum” which entells the restoration of the injured party to the position he or she was in, prior to the injury, thereby mandating the defaulting party to offer monetary payment to the affected party.²²⁵

2. Deterrence

Damages are awarded by the court to serve as a deterrent measure by punishing the party in an exemplary way to prevent further commission for the person,²²⁶ and similar act from others in the society²²⁷

²²⁴ *Eliochin (Nig.) Ltd. v. Mbadiwe* (1986) 1 NWLR (Pt. 14) 47

²²⁵ *Ebe v Nnamani* (1997) 7 NWLR (Pt.513) 479 ; *DHL Intl Nig. Ltd. v Eze-Uzoamaka* (2020) 16 NWLR (Pt. 1751)445

²²⁶ *Cassell & Co. Ltd v Broome* (1972) A.C. 1027, H.L.

²²⁷ Therapeutic Jurisprudence & Criminology in Jurisprudence: Mainstream, Modern, Millenial- African and The Pure Inspiration Theory of Law; Emeka Ozo Umeh ; at p.123-124.

However, the rationale of awarding damages doesn't solely aim at the parties to the suit; it extends to the society, whose social norms and values has been desecrated and broken by the criminal act done.²²⁸

3. Rational Choice Theory

This is another rationale used by the court is awarding damages as human beings are rational beings who make rational decisions before committing an offences. So, when the cost of committing the tort or crime is made severe by the legislations or judicial decions, (for instance: attaching heavy payments, or imprisonment) thereby making the profit or benefits of committing it insignificantly less, this would deter the society from committing further or similar crimes or torts.²²⁹

4. Social Engineering and Values

This is a rationale for awarding of damages, whereby the government gather data and statistics of more developed countries; and also from its societal morals, then implement them through its legislative and judicial arms by making the laws and administering of damages. With the aim of not only to respond to the societal needs of mitigation of crime rate; rather to make the society harmonized by putting its dynacity nature and evolving of new crimes into consideration in awarding of damages.²³⁰

CHAPTER FIVE:

²²⁸ *Josiah v State (1985) 1 NWLR (Pt.2) 125.*

²²⁹ *Understanding Criminology*; 3rd Ed. Sandra Walklate, at p.42-43.

²³⁰ *Jurisprudence and Legal Theory*; 2nd Ed. Chris C. Wigwe, SAN, at p.407

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.1 Summary of Findings

The course of this academical explorative indeed unveiled the alarming rate of Nigeria dissolution cases globally and locally which raises a question of "Why doesn't Nigerian Court apply punitive damages as a form of damages in a breach of marriage contract?" Court decisions dated back as the 19th century till date still strongly affirms the position of applying compensatory damages in the sense that it is a civil contractual case, and being a common law practicing country, it is a common law principle of awarding compensatory damages and not punitive damages because it is only damage that are natural and probable consequences of the breach of contract within the contemplation of parties at the time of the contract are awarded.²³¹

However, the study went ahead to examine America, a country with a federation of fifty states practicing a similar political and legal system but like Nigeria and its thirty-six States; already practicing the application of punitive damages in civil contractual cases like; breach of Marriage contract associated with resulting torts(in form of personal injuries)or crimes (fraud or marital violence) thereby mitigating the escalation of breach of Marriage contract with tortious conducts which is evidenced in various American Case-laws as stated in Chapter Four of this research work.

However, the court answered the above question by showcasing that without prejudice to the common law rule of the prohibition of application of compensatory damages, there is still exceptional cases to turn the hands of the clock. This was portrayed in a case of breach of promise to marriage. The court applied punitive damages here because the nature of a breach of promise to

²³¹ *Vital Inv. Ltd. v. CAP Plc (2022) ibid*

marry was comparable to tort than contract in substance rather than in form.²³² With regards to the court judgement in this case, it is safe to say that the nature of the breach of promise to marry is synonymous to the nature of marriage contract under the context of this research work.

Subsequently, the court laid a firm emphasize on application of damages in cases of breach of marriage contract by stating that damages weren't award solely for the purpose of compensation; however the essence of awarding damages extends to punishing the party in breach for the harm inflicted on the plaintiff, and the court exercises this through awarding punitive damages alongside compensatory damages, in order for both the breach of contract and tort committed would be equally compensated for.²³³

5.2 Recommendations

There is a need for the court to evaluate the prevailing circumstances of a case and not only the monetary reliefs sought before it, especially in tortuous conduct of the party in breach of the contract of Marriage like: cruelty; adultery; fraud; Oppressive or Offensive attribute towards the aggravated party; extremely negligent. Unfortunately, Nigeria Court accord damages in a civil cases as compensatory in nature which are awarded by the credibility of evidence to convince the court both at the trial or appellant court.²³⁴ Thereby, giving a blind eye to the need of punitive nature of damages. So, in order for a plaintiff to be entitled to an award of damages, the wrong must result to a loss, which grows naturally from the contemplation of the parties involved.²³⁵

²³² *Allied Bank (Nig) Ltd. v. Akubueze (1997) ibid*

²³³ *Eliochin (Nig.) Ltd. v. Mbadiwe (1986) ibid*

²³⁴ *Baliol (Nig.) Ltd. v. Navcon Ltd. (2010) 16 NWLR (Pt. 1220) 619 SC at 633*; See also: Section 22 of the Supreme Court Act

²³⁵ *Iloabachie v. Iloabachie (2000) 5 NWLR (Pt. 656) 178 CA at 222 Para C*; *G.K.F. Investment Nigeria Limited v. Nigeria Telecommunications Plc (2009) 15 NWLR (Pt. 1164) 344 SC at 384 Para. D-E.*

So, in cases, whereby the plaintiff suffered non-economic loss like verbal or mental torture. The aggravated person cannot seek punitive damages because damages are seen from a compensatory nature; and there is no non-economic loss that can be evidenced before the court that would be substantial enough for award of punitive damages in a marriage contract case. However punitive damages isn't regulated by any specific statute or law; but solely depends on the discretion of the court to be enforced. Unfortunately, in cases where punitive damages aren't pleaded and proven satisfactorily²³⁶ that discretionary power is withheld. Likewise, where the monetary relief claimed isn't commensurate to the harm or loss endured, the discretionary power of the court in awarding a higher monetary award apart from the already claimed monetary claim isn't commonly used in Nigeria judicially compared to American Judiciary.

Therefore, it is indeed, of a great recommendation for Nigerian Courts to exercise it's discretionary power in awarding of punitive damages in matrimonial cases whereby tortious claim arises from breach of contract, whether the punitive damages is claimed or not. And also, award of additional punitive damages over compensatory damages whereby the tort or harm constituted by the defendant exceeds the plaintiff's sought reliefs before the court. Instead of focusing solely on compensation because punitive damages covers the lacuna embedded in compensation thereby ensuring that justice properly carried out.

Additionally, considering the dynamic of the society of Nigeria with regards to cases on breach of marriage contracts and American Laws on application of punitive damages in civil cases inclusive of contractual matters. it is equally recommendable for the legislature to enact a law pertaining award of punitive damages to torts and crimes that emanates from civil cases precisely, contractual

²³⁶ *G.K.F. Investment Nigeria Limited v. Nigeria Telecommunications Plc (ibid) at 376 Para G*

cases which is inclusive of marriage contracts; and an omnibus clause should be annexed to enable the chief judges and presidents of all courts both state and federal to make court rules that would govern the application of punitive damages in marriage contracts.²³⁷

5.3. Conclusion

The law being an instrument of justice, equity and logic, should be handled to balance conflicting laws and interests existing in the society, with regards to its dynamic according to the sociological school of jurisprudence.²³⁸ Compensatory damages which is an existing measure used to protect breach of marriage contract in Nigeria isn't sufficient.

This is because the theory of compensatory damages under contract law, tends to restore the plaintiff back to the position they were before the breach occurred, more like a remedy to the plaintiff based on burden of prove and evidence of the actual loss incurred by the plaintiff. However, the theory of compensatory damages under torts tends to cover the lacuna created by the compensatory damages under contract, which doesn't award non- economic losses (emotional distress, pain and suffering), by awarding it as a form of punishment to the party in breach of the marriage contract.²³⁹ Subsequently, where the plaintiff suffered both pecuniary damage and compensatory damage, punitive damages comes in through the theory of compensatory damages under torts. So apart from the compensatory damages from breach of marriage contract; punitive damages would also be awarded as a punishment to deter the party in breach for future occurrence

²³⁷ <https://www.linkedin.com/pulse/how-punitive-can-damages-nigeria-kayode-omosehin>, accessed on 17th June, 2026.

²³⁸ Jurisprudence and Legal Theory, 2nd Edition; Prof. Chris Wigwe, SAN. pg. 406-427.

²³⁹ An Outline of the Law of Contract, 2nd Edition, Treitel, Butterworths 1979 at p. 326 - 327.(ibid)

of such conduct; therefore, being an exemplary case for reference to deter others from the same conduct. This is well illustration in effective breach theory in chapter two of this research work.²⁴⁰

This created a need for a consideration of applying punitive damages in breach of marriage contracts that has tortuous or criminal elements, as well as its efficiency in the American Society, as analysed in American case-laws in chapter four of this research work. Summing up all these analysis into consideration would solidify this argument of introducing the award of punitive damages in breach of marriage contract with resulting tortious or criminal elements.

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