

**AFE BABALOLA UNIVERSITY ADO EKITI,  
EKITI NIGERIA**

**College of Law**

Course Title: **Family Law in Nigeria**

Session: **2019 / 2020**

Topic 7: **CUSTODY OF CHILDREN**

Lecturer: Prof E. Smaranda OLARINDE, FC Arb

Date: 9<sup>th</sup> April 2020

# LOGISTICS

- Damilola Amodemaja class rep 2019/20  
08106601599

Thursday 9<sup>th</sup> April 2020

Note called Damilola to create a WhatsApp Platform for the class (4.04.20)-done

**First Virtual Class:** 9. April. 2020 @ 11am

# READING LIST

1. Sagay I., 1999 *Nigerian Family Law Principles, Cases, Statutes and Commentaries*, Ikeja, Nigeria; Malthouse Press Ltd. (Chapter XIII,)
2. Nwogugu E.I., 2001 *Family Law in Nigeria (Revised Edition)* Enugu, Nigeria; Heineman Educational Books( Nig) Plc.,
3. Onokah M.C., 2003 *Family Law*, Ibadan, Nigeria; Spectrum Books Ltd., (Chapter IX)

# READING LIST Contd.

4. Harris-Short S., & Miles J 2011 *Family Law Text, Cases, and Materials*, Oxford, Oxford University Press
5. Marriage Act: Chapter M6, LFN 2004
6. Matrimonial Causes Act: Chapter M7, LFN 2004
7. Child Rights ACT 2003, (Chapter VIII)

# CONTENT

## CUSTODY OF CHILDREN

- **Section 1.** Introduction
- **Section 2.** Principles governing grant of custody in matrimonial causes
- **Section 3.** CUSTODY OF CHILDREN: Case study

# OUTCOME

At the end of this module you will be able to:

- Understand **the importance of child custody on dissolution of statutory marriage**
- Explain and discuss the **main principles** guiding the courts in the award of custody of children
- **Analytically consider** judicial authorities on custody of children

## Section 1. INTRODUCTION: Custody of children

- The high rate of divorce in our society is not only alarming but unsettling to the children whose parents separate or divorce. One of the problems that usually follow divorce cases is who gets to keep the children between the couple
- The custody of children of a broken marriage is of importance not only to the parties but also to the community at large. (Ojo v. Ojo (1969) All NLR 434)

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# The Law governing grant of custody in matrimonial causes

- **Section 71 MCA;**
- **Section 1 Child Rights Act 2003; and**
- **Matrimonial Causes Rules.**



## The Law governing grant of custody in matrimonial causes Contd.

- **Section 71 MCA** contains the powers of the court in custody proceedings
- The court has very wide discretion in custody matters
- Judges:
  - must take utmost care to hear the parties adequately
  - May even proceed to hear them in chambers before making any order concerning the custody of children in open court (*Apara v. Apara (1968) 1AllNLR 241*)

What do you think  
**is the court's main consideration  
when determining a child custody  
issue in matrimonial proceedings?**

## INTRODUCTION Contd.

- The best interests of the child is the court's main consideration when determining a child custody issue. A court:
  - looks at the **facts and circumstances** of the case,
  - presumes that the child's **best interests** are served by granting custody to a parent and
  - seeks to find the **custodial arrangement** that best meets the child's physical, psychological and emotional needs.

# The best interest of the child

- This standard, which has been emphasized since the late 1970's, is much different than the old presumption for **maternal custody**.
- The old standard was based on the idea that mothers were better suited for giving the necessary nurturing for young children.

# Principles governing grant of custody in matrimonial causes (Section 71 MCA; s1 Child Rights Act and Mat Causes Rules)

- Section 71 of the Matrimonial Causes Act is very clear that custody should be decided based on the **child's best interest**. Case law has upheld this principle.
- The party who wants custody is held to very strict proof that he/she can maintain the children without regard to the courts powers to grant maintenance orders.
- The Child's Rights Act of 2003 makes provisions for protecting children during a divorce but **child custody law remains a product of Nigeria's marriage laws the Matrimonial Causes Act and Matrimonial Causes Rules**

# Principles governing grant of custody in matrimonial causes (Section 71 MCA; s1 Child Rights Act) Contd.

- **Custody proceedings help to determining who is legally entitled to a child.** (Nwosu V Nwosu [2012] 8 NWLR (Part 1301) 1 C.A.)
- How child custody issues are treated by the courts today, reflect changes in the decisions of our courts, states statutes, society and psychological research findings.
- The "**best interests of the child**" is the universal standard used in determining child custody issues.

# Principles governing grant of custody in matrimonial causes (Section 71 MCA; s1 Child Rights Act) Contd.

The principle that runs through s 71 is:

- 1. The welfare of the child must be paramount and overriding consideration** in determining to whom the custody of that child should be granted by the court (Williams v. Williams [1987] 2NWLR (Pt. 54) 66)
- 2. The welfare of the child of a marriage that has broken down irretrievably is not only paramount consideration but a condition precedent for the award of custody** (Alabi v. Alabi [2007] 9 NWLR (Pt. 1039)297)
- 3. Custody is never awarded as a reward for good conduct nor is it ever denied as punishment for the guilty party's matrimonial misconduct.**

# Principles governing grant of custody in matrimonial causes (Section 71 MCA; s1 Child Rights Act) Contd.

**5. Both parents have equal rights to the custody of their children.**

6. Custody of children should not be granted as a punitive measure to a party because of his or her conduct which might have contributed to the break down of the marriage

(*Olowofoyeku v. Olowofoyeku* [2011] 1NWLR (Pt.1227) 177; *Nanna v. Nanna* (2006) 3NWLR (Pt.966) 1; )

6. In considering the welfare of the children of a broken marriage efforts must be made to ensure that such children are not denied the love, care and affection of either parent. Where one of the parents deliberately places obstacles towards the attainment of such parental love and affection, such parent shall be in violation of the right of the child

(*Olowofoyeku v. Olowofoyeku* supra)

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What do you understand  
by

**The best interest of  
the child?**

# Principles governing grant of custody in matrimonial causes (Section 71 MCA; s. 1 Child Rights Act)

- By virtue of section 1 Child Rights Act 2003 in every action concerning a child... The **best interest of the child shall be the primary consideration**
- The meaning of **best interest of the child** would include their physical and mental welfare, sound education, security, and the overall well being and development (Odusote v. Odusote [2012] (Pt. 1288) 478)
- The facts and advantages of brotherhood and sisterhood must also be considered, where there is more than one child of the marriage, and it is not proposed to give custody of one child to one of the parents and another to a different parent. (Williams v. Williams; Attiogbey v. Attiogbey & Another [1986] 1QLRN 61)

## Section 3. CUSTODY OF CHILDREN: Case study

NWOSU v NWOSU [2012] 8 NWLR (Part 1301) 1 C.A.

### *FACTS*

Parties were married under statutory marriage. The respondent filed a writ in court against the appellant for unilaterally withdrawing their four children from school, their matrimonial home; and relocating to another state in Nigeria, where the respondent was denied access to them.

- The appellant filed a petition for dissolution of the marriage and custody of the children. The respondent did not oppose the dissolution but sought for custody of the children.

*The trial court* granted custody to the respondent.

*On appeal, the Court of Appeal* allowed the appeal by the appellant.

- An application to the court can be made for the custody, guardianship, welfare, advancement or education of a child pending the disposal of the proceedings.  
**The ancillary relief of custody can be sought after the principal relief of the dissolution of marriage had been first instituted.**
- **Both parents have equal rights in custody of the children. Custody proceedings help determine who is legally entitled to a child.**

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# CUSTODY OF CHILDREN: Case study

- **ODUSOTE v ODUSOTE [2012] 3 NWLR (Part 1288) 478 C.A.**

## *Facts*

- Appellant was married to the respondent in USA under the Statutory Marriage. They have three children. On the 8<sup>th</sup> of October 2004, the respondent filed a petition for the dissolution of the marriage and custody of the children of the marriage, all of whom were of tender years between ages eleven to thirteen. The respondent claimed that the appellant was violent and had no help or maid to help the children. The respondent testified that her annual income was N3.6 million and she had a maid and the children were always happy with her. The appellant earned N28000 monthly and showed no care for the children while they lived with their mother.

*The lower court* -granted the petition for dissolution and granted custody to the respondent. The appellant appealed to the Court of Appeal

*Court of Appeal*- dismissed the appeal.

- The interest of the children in question is the paramount consideration in determining who gets custody. By the provisions of Section 7(1) Matrimonial Causes Act 1970, the court shall have regard to the children's interest.

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# OTHER CASES ON CUSTODY OF CHILDREN: Case study

**EZEAKU v OKONKWO [2012] 4 NWLR (Part 1291) 529 C.A.**

## *Facts*

The appellant was married to one Mr. Okonkwo in 1976 under native law and custom but separated in 1988 until his death in 2005. The deceased had contracted another native law marriage during the separation. The first marriage produced one child and the second marriage produced two children.

- The appellant who had custody of her child sought to partake in the distribution of the deceased's estate as managed by the second respondent.

*The appeal was unanimously allowed by the Court of Appeal.*

- *There is a standard process for the dissolution of marriage, whether statutory or customary, and concrete evidence that the necessary requirements were satisfied must be adduced before a court can hold that there has been a divorce and the validity of the contracted marriage* between the couples that had formally and legally ended.
- The court held that: the appellant and the child of the marriage were entitled to share in the deceased's estate.

# **CUSTODY OF CHILDREN: Case study**

## **Assignment:**

Report and discuss the decisions in the following cases:

- 1. ANYASO v ANYASO [1998] 9NWLR (Pt. 564) I50**
- 2. DAMULAK v DAMULAK [2004] 8 NWLR (Part 814) I5I**

**Date for presentation: First week of resumption**

*Prof. E. Smaranda Olarinde*