The LEGITIMACY OF A CHILD UNDER CUSTOMARY LAW.

The statutory Presumption of legitimacy is enshrined under Section 148 Evidence Act which provides ‘that where a person was born during the continuance of a valid marriage between his mother and any man or within 280 days after dissolution, the mother remaining unmarried, the court shall presume that the person in question is the legitimate son of that man’. This act stipulates that to be legitimate a child’s parent must be lawfully married either at the time of his/her conception, at the time of his birth or born after 280 days only after the dissolution of the marriage. In Nigeria, lawful wedlock includes Marriage under the act, Customary Law Marriage and Islamic Law Marriage.

Under Customary Law, For instance a child may be regarded as legitimate even though the natural parents are not legally married to each other and the person to whom the child is legitimate is not its natural father. For instance, under Igbo Customary Law a man who has no male child, may persuade one of his daughters not to marry. The purpose is for her to produce a male successor for her father and thereby save the lineage from extinction. Any male child produced has full rights of succession to the grand fathers land and title. Also a barren wife may in an effort to fulfill her obligation to bear children for her husband, marry another wife for her husband including paying the bride price of the marriage. The children born of the other wife are regarded as the legitimate children of the husband. There are also other instances of a child being regarded as legitimate child of a man who is not its natural father. For instance, where a widow remains in her late husband’s family without remarrying and her marriage with her late husband still subsists. In the case of Nwareibe vs. President Oru District Court & Anor the husband of Oyibbo died and she continued to live in the matrimonial home. She became pregnant by the applicant Nwareibe while still living in the matrimonial home but moved to stay with her family before delivery. He filed an action in the customary court for a formal annulling of the marriage to the deceased – the court held that her marriage to the deceased was not dissolved by death in 1952 and accordingly awarded Oyibbo child to the brother of the deceased. The custom was judicially noticed and approved as not being contrary to natural justice and equity. A child of a void or voidable Customary Law marriage is not regarded as born legitimate although such a child may in some parts of the country be legitimated by the subsequent acknowledgement of its natural father, see Section 115 (3) of Matrimonial Causes Act 1970 which relates to Legitimacy. The provisions clearly stipulate that the marriage must be a statutory marriage in accordance with the Marriage Act and not Customary Law Marriage, the father of the illegitimate person must be domiciled in Nigeria at the time of marriage and the person to be legitimated must be alive at the date of the marriage.

SOCIAL DIARY

Safiya Ado Gwaram formerly of the Legal Dept married Mustapha Ahmed in a wedding fatiha on the 22nd July 2011. The Legal Luminary wishes the newly-weds a happy married life!!!

The Luminary felicitates with Aisha Al-Makura and Chioma Momah both members of the Editorial Board of Luminary who celebrated their birthday’s on the 4th and 9th July, respectively. Happy returns!!!

The introductory course on Bank Examination for newly-recruited staff resumed 18th July 2011.

Feedback!!!

This is a well prepared dish meant for everyone but kept in a room where very few people go. You guys are doing a great work. But, how many staff make use of the outlook?

Daniel Eniojo—Finance Dept