



# The Legal Luminary

In- house E-Newsletter of the Legal Department

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## Editorial Board

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- Mrs Nkese Cookeygam: Vice Editor in Chief
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- Aisha Al-Makura
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## Inside this issue:

From the Editor:  
Aisha Al-Makura

Q & A:  
Abdullahi Musa

Social Diary:  
Talatu Y. Akhidime

Feature Article:  
L.A Ebinama Esq

Cartoon  
Panshak Haggai



Mr. Wale stood up in court. 'As God is my Judge, I do not owe my ex-wife any money'. Glaring down at him, the Judge replied 'He's not, I am'. Mr. Wale asked, 'You do?' [www.jokes2go.com](http://www.jokes2go.com)

## NEWS

A Technical C'ttee works out modalities for implementing the new national minimum wage of N18,000.

Ghastly Motor accident along Nyanya-Keffi road killing over 30 people.

## From the Editor!

It certainly is a 'big shoe' am filling in for the month of July as our very own Mrs. Chioma N. Momah is on her annual leave and has passed the torch of the Editor for Legal Luminary (July Edition) to my humble self. We promise that this edition will be stimulating as well as educational. For our feature article we will be exploring the Issue of Legitimacy under Customary Law in Nigeria. In the Q and A section we look at whether a child can be made Legitimate after born Illegitimate under the Islamic Law. Be sure to laugh your heads off with our Jokes and Cartoons. As always – your feedback is highly welcome. Thank you!!!

## Q CAN AN ILLEGITIMATE CHILD BE MADE LEGITIMATE UNDER ISLAMIC LAW?

**A** Under Customary Law an illegitimate child can be made legitimate through Legitimation which is a proceeding that creates a status which did not exist before. This is not the case under Islamic Law because the nature of the birth cannot be changed. There are 2 modes of paternity under Islamic Law, one - the law treats the natural father as the father of the child and two - acknowledgment of paternity.

Adoption may lead to the result that someone who is not the actual father acquires rights of an actual father. But adoption is not recognized in Islam. Parentage is therefore established in Islam in one of the following ways. One - by birth during a regular or irregular marriage or two - by acknowledgement in certain circumstances. It should be noted that no statement made by one man that a proved illegitimate person is his child can make the second person legitimate. It is the opinion of the Council of scholars in

Saudi Arabia that an illegitimate child cannot be made legitimate through marriage or legitimation. The illegitimate child can only enjoy the following benefits child care support including feeding, medicals, education etc but cannot inherit from either of the parents.

Another school of thought is of the opinion that the child can only inherit from the mother since there is no question over the maternity.

The rules of presumptions as to legitimacy in Islamic Law are as follows; a child born within 6 months of the marriage is illegitimate unless the father acknowledges it, a child born after 6 months of the marriage is legitimate unless the father disclaims it and a child born after the termination of marriage is legitimate if born within 10 lunar months in Shia Law within 2 lunar years Hannafi Law and within 4 Lunar years in Shafi or Maliki Law.

## 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 Nwaribe 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 Nwaribe 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 annulment for the marriage to the deceased – the court held that her marriage to the deceased was not dissolved by death in 1952 and accordingly awarded Oyibbos 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 acknowledgment of its natural father, see Section 115 (3) of Matrimonial Causes Act 1970 which relates to Legitimacy. The provisions clearly stipulates 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 newlyweds 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