

*The South African law of husband and wife H. R. Hahlo, Ellison Kahn, South Africa Snippet view - Common terms and phrases.*

History of rape One of the origins of the concept of a marital exemption from rape laws a rule that a husband cannot be charged with the rape of his wife is the idea that by marriage a woman gives irrevocable consent for her husband to have sex with her any time he demands it. Feenstra , U. The property to be withheld in a female was her virginity; this was the commodity Bergen, Following this line of logic, a woman was and still is in many cultures across the globe first the property of her father, then, upon marriage, the property of her husband Bergen, Therefore, a man could not be prosecuted for raping his own wife because she was his possession Schelong, Therefore, rape laws were created to "â€¦protect the property interests men had in their women, not to protect women themselves" Schelong, This concept of women as property permeates current marital rape ideology and laws throughout the globe. Following this logic, if consent is not part of marriage, then it is not necessary for intercourse. The autonomy of the wife is also often compromised in cultures where bride price is paid. Under customary law in certain parts of Africa, forced sex in marriage was not prohibited, although some specific circumstances, such as during advanced pregnancy, immediately after childbirth, during menstruation, or during mourning for a deceased close relative, were recognized as giving the wife the right to refuse sex. This can be seen in English common law , in force in North America and the British Commonwealth , where the very concept of marital rape was treated as an impossibility. Marriage created conjugal rights between spouses, and marriage could not be annulled except by a private Act of Parliamentâ€”it therefore follows that a spouse could not revoke conjugal rights from the marriage, and therefore there could be no rape between spouses. The principle was framed as an exemption to the law of rape in an English courtroom in *R v Clarence*, [11] but it was not overturned until by the House of Lords in the case of *R. R in* , [12] where it was described as an anachronistic and offensive legal fiction. Feminist critique in the 19th century[ edit ] From the beginnings of the 19th century feminist movement , activists challenged the presumed right of men to engage in forced or coerced sex with their wives. De Cleyre defended Harman in a well-known article, "Sexual Slavery. He wrote "Marriage is for woman the commonest mode of livelihood, and the total amount of undesired sex endured by women is probably greater in marriage than in prostitution. Feminists worked systematically since the s to overturn the marital rape exemption and criminalize marital rape. This establishes marital rape as a human rights violation. In many countries, married women may not refuse to have sexual relations with their husbands, and often have no say in whether they use contraception. Ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men. Personal issuesâ€”such as when, how and with whom they choose to have sex, and when, how and with whom they choose to have childrenâ€”are at the heart of living a life in dignity. Of these, 32 have made marital rape a specific criminal offence, while the remaining 74 do not exempt marital rape from general rape provisions. Marital rape is not a prosecutable offence in at least 53 States. Four States criminalize marital rape only when the spouses are judicially separated. Four States are considering legislation that would allow marital rape to be prosecuted. In Pursuit of Justice stated that page Traditionally, rape was a criminal offense that could only be committed outside marriage, and courts did not apply the rape statutes to acts of forced sex between spouses. With changing social views, and international condemnation of sexual violence in marriage, courts have started to apply the rape laws in marriage. The current applicability in many countries of rape laws to spouses is currently unclear, since in many countries the laws have not been recently tested in court. In some countries, notably jurisdictions which have inherited the Indian Penal Code such as Singapore , India , Bangladesh , Sri Lanka , Burma and some countries in the Commonwealth Caribbean region, the laws explicitly exempt spouses from prosecution for instance, under the Indian Penal Code, which has also been inherited by other countries in the region, the law on rape states that "Sexual intercourse by a man with his own wife is not rape". Whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her

unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years". Another example is South Sudan , where the law states: It also provided a definition of violence against women, and gave a list of non-exhaustive examples, including marital rape see section "Definition" para 1. Although the approach on the issue of violence against women has varied significantly among European countries, the traditional view that acts of violence against a woman are crimes against honor and morality, and not against the self-determination of the woman, was still prevalent in the s in many countries. A report produced by Amnesty International , [34] described Danish laws on sexual violence as "inconsistent with international human rights standards", [35] which has led to Denmark eventually reforming its sexual offenses legislation in . There are many examples from past practice in Council of Europe member states that show that exceptions to the prosecution of such cases were made, either in law or in practice, if victim and perpetrator were, for example, married to each other or had been in a relationship. The most prominent example is rape within marriage, which for a long time had not been recognised as rape because of the relationship between victim and perpetrator. Canada , [50] [51] New Zealand , and Ireland . In Switzerland marital rape became a crime in [54] and became a state offense in [55]. The country has been made the object of international criticism in regard to its approach towards violence against women. In , the Brussels Court of Appeal recognized marital rape and found that a husband who used serious violence to coerce his wife into having sex against her wishes was guilty of the criminal offense of rape. It would appear, however, that to the extent that the marital rape exemption exists, it is confined to circumstances where the spouses are cohabiting and there are no separation proceedings in being, or even, perhaps, in contemplation. In the Court convicted a man of the rape of his wife, stating that the presumption that spouses have consented to sexual acts that occur within marriage is only valid when the contrary is not proven. Before a new Criminal Code came into force in , [75] the law on rape in Bosnia and Herzegovina also contained a statutory exemption, and read: Although Italy has a reputation of a male dominated traditional society, it was quite early to accept that the rape law covers forced sex in marriage too: It entered into force on 24 October . This legislation also prohibits numerous other forms of violence within marriage and cohabiting relations, and various other forms of abuse of women. One opponent of the law was legal scholar Taweekiet Meenakanit who voiced his opposition to the legal reforms. He also opposed the making of rape a gender neutral offense. Meenakanit claimed that allowing a husband to file a rape charge against his wife is "abnormal logic" and that wives would refuse to divorce or put their husband in jail since many Thai wives are dependent on their husbands. Thus, marital rape is not a criminal offense under the IPC.

**Chapter 2 : Marital rape - Wikipedia**

*According to South African law there is no such concept of a "common law wife" (or vice versa) "common law husband". It is a myth. Therefore two persons cohabitating outside of the usual marriage contract, have no rights in terms of the law.*

In *Daniels v Campbell*, [73] an application was made for confirmation of an order of the Cape High Court which had declared invalid and unconstitutional certain provisions of the Maintenance Act [74] and the Intestate Succession Act [75] for their failure to recognise as "spouses" persons married according to Muslim rites. Sachs held that the word "spouse" in its ordinary meaning includes parties to a Muslim marriage, because such a reading corresponds to the way the word is generally understood and used, and because it would be far more awkward from a linguistic point of view to exclude parties to a Muslim marriage from the word "spouse" than to include them. The historic exclusion did not flow from the courts giving the word its ordinary meaning but from a linguistically strained use of the word flowing from a particular cultural and racial approach, owing more to prejudice than to the English language, so that both the impact and the intent of the restricted interpretation was discriminatory. The court found that the obligation in fact did not fall exclusively on Parliament and the President, and that, in terms of the Constitution, [78] the court did not have exclusive jurisdiction to entertain the application. The question, therefore, of whether or not Parliament and the President are under an obligation even if not exclusive to recognise Muslim marriage, and whether or not such legislation would be consistent with the Constitution, [79] went unanswered. Judicial recognition[ edit ] Before the new constitutional dispensation, the recognition of Muslim marriages was regarded as a "retrograde step and entirely immoral. In *Amod v MMVF*, the action was for payment of damages and loss of support after the death of a spouse, married in terms of Islamic law and not registered under Marriage Act. The duty of support was found to be legally enforceable for monogamous Muslim marriages, but the issue of polygyny was left open. It was in *Kahn v Kahn* [84] that spouses in polygynous Muslim marriages were finally held, in terms of the Maintenance Act, [85] to have a legally enforceable duty of support to one another. In *Hassam v Jacobs*, the issue was whether or not the benefits provided by the Intestate Succession Act and the Maintenance Act accrue to surviving spouses of polygynous Muslim marriages. The Cape High Court found that the Intestate Succession Act, [86] in discriminating on grounds of gender and religion and marital status, was inconsistent with the Constitution. The word "spouse" in the Act would be interpreted henceforth to include spouses in polygynous Muslim marriages, while "survivor" in the Maintenance Act would be read to include surviving partners of polygynous Muslim marriages. In the Constitutional Court, however, it was found that "spouse" was not reasonably capable of being understood to include more than one spouse in the context of polygynous Muslim marriages. The words "or spouses," therefore, are to be read in after each use of the word "spouse" in the Act. In summary, the constitutional validity of polygamy has not been subject to judicial scrutiny—indeed, it has been avoided—and the current position is that Muslim marriages receive only limited recognition in South African law. In the Draft Muslim Marriages Bill, there are both provisions in support of recognition [87] and provisions against it. The application was dismissed on grounds of legal impossibility. A marriage concluded in terms of religious law, and compliant with the civil requirements, enjoys dual validity. The secular dissolution of such a marriage in terms of the Divorce Act [90] does not have the effect of dissolving the religious marriage if, as is usually the case, that religion has its own specific requirements for dissolution. The only means for dissolving such a marriage would be to attack successfully the non-recognition of divorce in Hindu religious law. The courts could not and would not interfere in this regard. In *Govender v Ragavayah*, [91] the court dealt with an application for an order declaring a Hindu widow to be recognised as a spouse in terms of Intestate Succession Act. This it granted, reading the word "spouse" in the Act to include partners in monogamous Hindu marriages. Domestic partnerships[ edit ] Opposite-sex domestic partnerships[ edit ] A domestic partnership is defined by "living together outside marriage in a relationship which is analogous to, or has most of the characteristics of a marriage. There is, however, some statutory recognition in the Compensation for Occupational Injuries and

Diseases Act , [93] and judicial recognition in the form of *Volks v Robinson*, which concerned a man and a woman who had lived together in a permanent life partnership. When he died, she lodged a claim for maintenance against his estate in terms of the Maintenance Act but was rejected by the executor. Domestic partnerships are currently self-recognised and regulated. The partners may jointly enter into contracts of sale and lease, as well as into a universal partnership, whereby they agree to put in common all their property, *universorum bonorum*: Universal partnerships may be entered on either express or tacit terms, but both partners will be required to contribute, and the official objective is to make a profit. Alternatives to the universal partnership exist in the form of life partnership contracts and contracts of agency. It is also worth noting that a person may leave his estate to anyone in his will. There is considerable debate over the future status of domestic partnerships in South Africa, particularly among feminists. The Civil Union Act requires registration and has a same-sex focus. The Domestic Partnerships Bill, providing for the legal recognition of domestic partnerships and the enforcement of their legal consequences, was tabled on 14 January Its preamble observes that, under the Constitution, everyone is equal before the law and has the right to its equal protection and benefit. Statutory recognition[ edit ] Same-sex partnerships also enjoy statutory recognition in South Africa, as of 30 November , under the Civil Union Act, which provides for the right to enter into a civil union, open to both opposite-sex and same-sex couples, which may be called either a "marriage" or a "civil partnership"; [97] the right of a marriage officer, employed by the state, to refuse to marry same-sex couples on grounds of "conscience, religion or belief;" [98] all rights and obligations and benefits of a marriage to be afforded to civil unions. The following judgments, excluding the already-discussed *Fourie*, illustrate its development: *National Coalition for Gay and Lesbian Equality v Minister of Justice* [] dealt with a challenge to the constitutionality of the offence of sodomy , and required consideration of the common law. The court found that it amounted to a violation of the right to equality which cannot be limited by unfairly discriminating against gay men on basis of sexual orientation. In *Du Plessis v Road Accident Fund* , [] a same-sex couple had lived together in a long-term relationship, having gone through a ceremony similar to marriage, and would have married had it been possible. They had the intention of reciprocal duty of support. The court held, however, that to extend to such partners the common-law action for loss of support would be an incremental step to ensure that the common law accorded with the dynamic and evolving fabric of South African society as reflected in the Constitution, recent legislation and judicial pronouncements, [] and therefore that the plaintiff was entitled to claim damages from the defendant for loss of that support. Mark Gory, however, wished to inherit in terms of Intestate Succession Act. The court held that the relationship between Brooks and Gory amounted to a same-sex permanent life partnership, and that they had pursued reciprocal duties of support. The exclusion of same-sex partners from the Act was unconstitutional, and the court ordered a reading-in of words "or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support. Engagement[ edit ] An engagement , which is an agreement *sui generis*, is generally defined in the common law as "a legal agreement between a man and a woman to marry each other on a specific or determinable date. Capacity[ edit ] To enter into an engagement, one must generally be eighteen years of age the age of majority or older. Minors require the consent of both their parents or guardians unless certain circumstances are in place or a court order is granted. Removal of consent results in the immediate termination of the engagement. Persons with mental illness cannot become engaged.

## Chapter 3 : Your legal rights under customary marriage | DESTINY MAN

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A marriage contract is not considered legal and complete unless a dowry has been specified. This right cannot be forfeited, even if the bride approves, until after the marriage contract is completed. She has the freedom to do whatever she wants with it. The wife should receive full maintenance from her husband including food, clothing, housing, education, recreation, medication etc. Even if the wife is rich, she does not need to spend anything on her husband or household. Allah puts no burden on any person beyond what He has given him. A husband must be kind to his wife. His behavior towards her is a measure of his faith. The Prophet pbuh said: A husband cannot ask his wife to do anything that is against Islam. The Prophet pbuh listened to the advice of his wives in matters ranging from the smallest to the greatest. He must respect her and pay attention to her needs as she will respect him and pay attention to his. If the wife works outside the house, it is admirable for the husband to hire help to relieve her from the burden of housework. A husband must avoid excessive jealousy. A husband must not beat his wife. The Prophet pbuh condemned the man who beats his wife in the day and then approaches her at night. If a husband beats his wife to the extent of inflicting serious injury, it is enough grounds for her to obtain divorce from a judge. He must never ever divulge the secrets of his household or marriage. He must treat her generously at all times. The wife has the right to live in separate accommodation with her husband and children if she does not want to share it with anyone like her in-laws or relatives. It is the obligation of the husband to make sure that his wife acquires all the Islamic knowledge, like how to pray, how to fast etc. If this means that he has to spend money on books or tapes, then he must do so. The ruler is a shepherd and shall be asked about his wards. The man is a shepherd of his family and will be asked about his ward. The husband should not stay away from his wife or keep his wife in a state of suspense, whether at home or abroad, for a prolonged period of time except with her consent. A husband must exercise patience and forgiveness in the case of disagreement or dispute, and not rush to divorce. The declaration of divorce is a grave matter. A wife must obey her husband, be respectful towards him, and always be eager to please him and make him happy. They are fertile and loving. Watch this video for more clarification as to what is meant by this Ayah. She also cannot leave her house without his knowledge and permission. A woman should make herself look beautiful for her husband. A wife should help her husband to worship Allah. And may Allah have mercy on the woman who gets up at night to pray, and wakes her husband up to pray, and if he refuses, she sprinkles water in his face. A wife should be tolerant and forgiving. There is no quality that will endear her to her husband like the quality of tolerance and forgiveness, and there is nothing that will turn her husband against her like resentment, counting faults and reminding him about his mistakes. A wife expresses respect towards her husband by honoring and respecting his family, especially his mother. She helps him to honor and respect his mother by doing the same. Wives are expected to help her husband in dealing with the outside world and to play her role in life by offering her opinions and advice, and supporting him in all his affairs. She never hesitates to stand by his side, encouraging him, supporting him and offering advice and consolation. A wife should show gratitude to her husband. It is a good wife. If he looks at her, she gives him pleasure; if he orders her, she obeys; and if he is away from her, she remains faithful to him.

## Chapter 4 : Domestic Partnerships

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## Chapter 5 : Rights of Husband & Wife in Islam â€“ Jamiatul Ulama KZN

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### Chapter 6 : Common law marriages in South Africa? | Yahoo Answers

*The court also referred to HAHLO, "The South African Law of Husband and Wife", 5th Ed. at p where the author pointed out that clauses depriving the Courts of their statutory power of divorce to award post-divorce maintenance to one of the spouses or to order forfeiture of the benefits against one of the spouses, was contrary to the.*

### Chapter 7 : Donations made between spouses | South African Tax Guide

*Under the South African Compensation for Occupational Diseases Act, , a surviving domestic partner may claim for compensation if their partner died as a result of injuries received during the course of work, if at the time of the employee's death they were living as 'husband and wife'.*

### Chapter 8 : South African family law - Wikipedia

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*South African family law is concerned with those legal rules in South Africa which pertain to familial relationships. It may be defined as "that subdivision of material private law which researches, describes and regulates the origin, contents and dissolution of all legal relationships between: (i) husband and wife (including the parties to a civil union); (ii) parents, guardians (and other.*