

最新不列颠法律袖珍读本(英汉对照)



家庭法

Family Law



全国优秀出版社
武汉大学出版社

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徐妮娜\译



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出版说明

最新不列颠法律袖珍读本(英汉对照)系列丛书之原本是英国卡文迪什出版有限公司(Cavendish Publishing Limited)最新推出的,我们采用英汉对照的形式出版,以利于读者研习法律及法律专业英语之用。该读本系列包括了对不列颠法律的广泛介绍,其中每一本都是研习一个专业科目的完整的袖珍指南。其精致的文本、原版的法律专业英语、规范的专业汉译以及简明的格式、友好的界面使得该读本系列成为读者研习各个学科的基本理论和最新研究成果,尤其是学习纯正的法律英语的理想帮手。

1 Nullity

Although fewer than 1% of marriages are now terminated by nullity petitions today, examiners still require a knowledge of this area.

Nullity falls into two categories – void and voidable marriages. Each area has its own concepts and grounds for its existence.

Void marriages

There are social and public policy reasons as to why the marriage should not exist, as illustrated by the grounds contained in s 11 of the Matrimonial Causes Act (MCA) 1973. Because of public policy considerations, void marriages are void *ab initio* and the decree granted is declaratory but necessary to gain financial provisions. Also, third parties can challenge the validity of the marriage. There are no special defences.

Marriages celebrated after 31 July 1971 will be void on the following grounds.

Section 11(a)(i)

The parties to the marriage are within the prohibited degrees of relationship: either blood relations (consanguinity) or non-blood relations (affinity).

1 婚姻的无效

当今,虽然只有不到 1% 的婚姻因要求宣告无效的诉讼请求而终止,但审查者仍需掌握该领域的知识。

婚姻的无效可分为两类——无效婚姻和可撤销婚姻,两者都有各自独有的观念和存在理由。

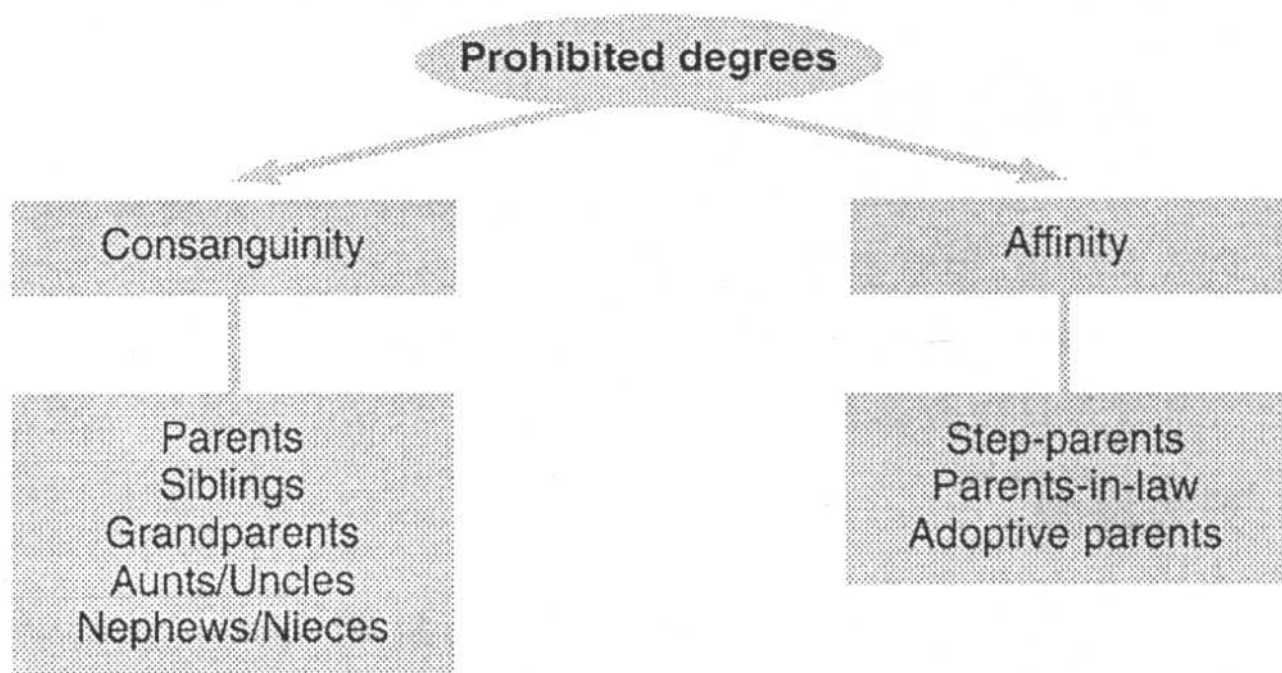
无效婚姻

正如 1973 年《婚姻诉讼法》(MCA)第 11 条规定的婚姻无效原因所表明的,婚姻不应成立的原因涉及社会和公共政策。出于公共政策考虑,无效婚姻自始无效,对其发布的判决都是宣告性的,而该宣告性判决对当事人获得经济扶持而言又是必需的。第三人也能对婚姻的效力提出异议。在婚姻诉讼中不存在特别辩护理由。

1971 年 7 月 31 日以后缔结的婚姻,会因以下原因而无效:

第 11 条 a 款 i 项

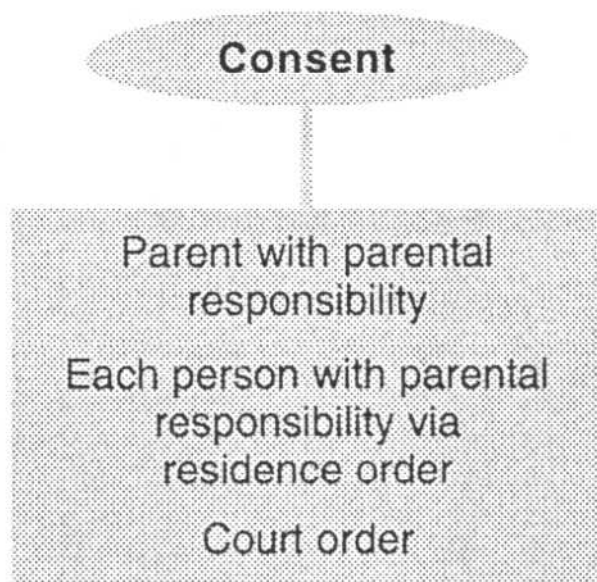
婚姻双方当事人在禁止结婚的亲等范围内,即他们是血亲(血缘关系),或是非血亲(姻亲关系)。

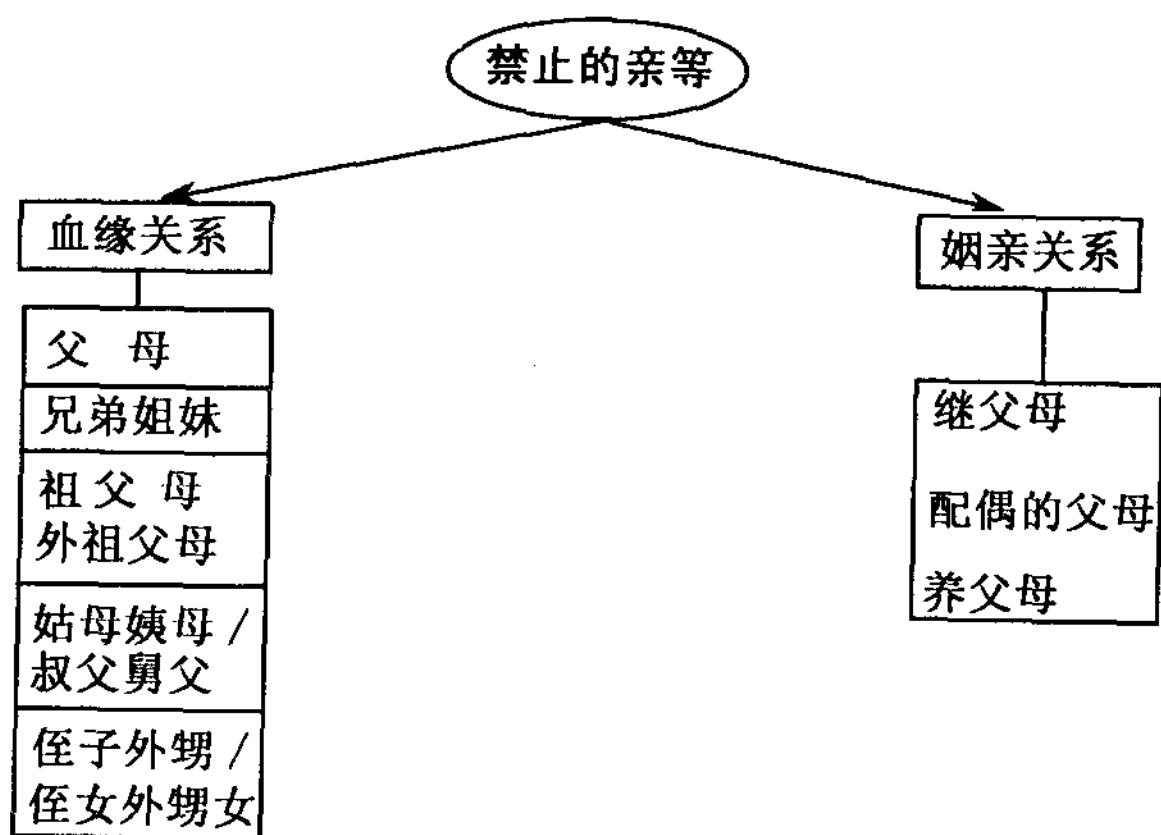


Section 11(a)(ii)

Either party is under the age of 16. However, if both parties are domiciled abroad at the time of the marriage, the marriage will be recognised as valid if it is recognised as valid in the country in which it was celebrated.

If either party is aged over 16 but under 18, then consent is required from certain people:





第 11 条 a 款 ii 项

任何一方年龄在 16 岁以下。但是如果双方在婚姻缔结时都居住在国外,且婚姻依婚姻举行地法有效,则该婚姻也会在英国被认为有效。

如果任何一方年龄在 16 岁以上 18 岁以下,则婚姻需要经过特定人的同意:

同 意

负有父母义务的父亲或母亲
任何因居住令而负有父母义务的人
法院命令

However, if this consent is lacking, the marriage will not be void unless the parents have publicly objected to the banns, thereby voiding them. An application can also be made to the High Court, county court or magistrates' court to obtain consent if the parents cannot give consent due to absence or inaccessibility.

Section 11(a)(iii)

The parties have intermarried in disregard of certain requirements as to the formation of marriage.

Publicity has been deemed necessary to prevent clandestine marriages, as illustrated by the existing rules, which are complex and are dealt with here only in outline.

Formalities for weddings



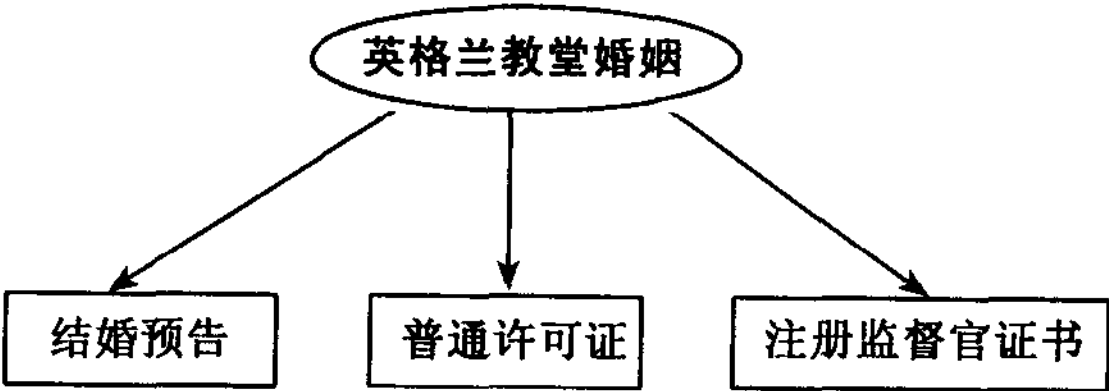
然而,如果缺乏特定人的同意,除非父母已对结婚预告作出了公开反对从而使之无效,婚姻仍然有效。在父母外出或无法联系而无法给予同意的情况下,结婚双方当事人也可向高等法院、郡法院或治安法院申请获得同意。

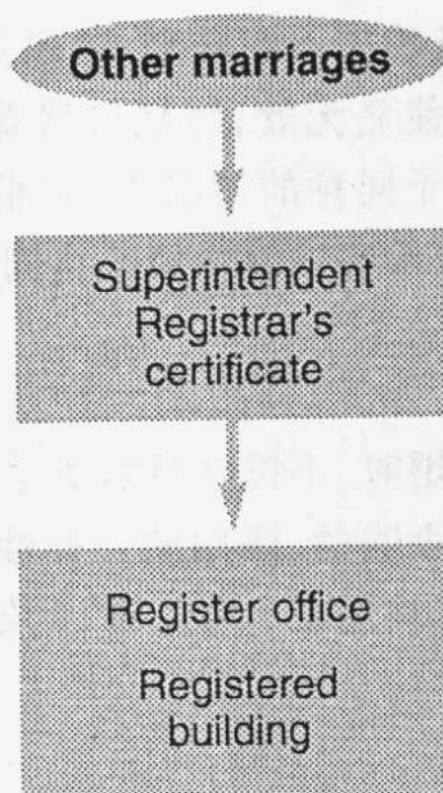
第 11 条 a 款 iii 项

双方当事人结婚时,不符合婚姻成立的某些形式要件。

正如现行规定表明的,婚姻的公开性被认为是为防止秘密婚姻所必需的,这些规定十分复杂,此处只作概述。

婚姻的正式手续

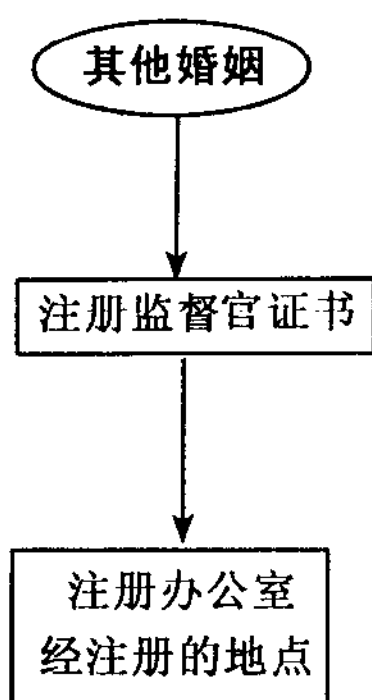




When there are defects in the formalities, the marriage will only be void if they are brought about 'knowingly and wilfully' by both parties.

VOID

- < No certificate/licence
- < No banns/notice
- < Banns not published properly
- < Public objection to banns
- < Over three months since banns
- < Celebrant not qualified
- < Building not approved/referred to in licence



当婚姻形式存在缺陷时,只有在该缺陷是由双方当事人“有意地和蓄意地”造成的情况下,婚姻才会无效。

无效

- 没有证书/许可证
- 没有结婚预告/通知
- 没有以适当方式发布结婚预告
- 结婚预告遭公开反对
- 预告 3 个月以后才结婚
- 司仪神父不合格
- 注册地点不是许可证所批准/指定的

Section 11(b)

At the time of the marriage, either party was already lawfully married.

This sub-section requires the parties to satisfy the definition of marriage contained in *Hyde v Hyde* (1866), that is, 'the voluntary union for life of one man and one woman to the exclusion of all others'. In *Whiston v Whiston* (1995), the woman had committed bigamy, knowing that her first husband was still alive.

Maples v Maples (1987) illustrates that if a party has entered a valid marriage, then, in order to terminate that marriage and be able to enter another, the termination must also be valid.

Section 11(c)

The parties are not respectively male and female. The cases arising in this area normally concern a party who has undergone a sex change.

UK

Corbett v Corbett (1970)
Bellinger v Bellinger (2001)

EUROPE

Rees v UK (1990)
Cossey v UK (1991)
B v France (1992)
Goodwin v UK (2000)

The approach in England and Wales was to treat a transsexual as being of their original birth sex, even if they had undergone full reassignment surgery, as the tests to be used related to chromosomal structures, etc, as decided in *Corbett*. Following the European Court of Human Rights' decision in *Goodwin*, this will no longer be the case. Transsexuals who

第 11 条 b 款

在婚姻缔结时,已有一方处于合法婚姻状态之中。

该款要求双方当事人满足 *Hyde v Hyde* (1866) 案所包含的婚姻定义,即“一个男人和一个女人一生的自愿结合,排斥任何其他人”。在 *Whiston v Whiston* (1995) 案中,因女方明知她的第一个丈夫还活着,而犯了重婚罪。

Maples v Maples (1987) 案表明,如一方当事人已有效缔结婚姻关系,为了终止该婚姻关系以缔结另一婚姻关系,其终止前一婚姻关系的手续也必须是有效的。

第 11 条 c 款

婚姻双方当事人性别并非一男一女。

在该领域出现的案件通常涉及婚姻一方的性别改变。

英国

Corbett v Corbett (1970)

Bellinger v Bellinger (2001)

欧洲

Rees v UK (1990)

Cossey v UK (1991)

B v France (1992)

Goodwin v UK (2000)

以前,英格兰和威尔士所采用的性别辨认方法是以变性者出生时的性别为准,如同 *Corbett* 案的判决一样,即使变性者已经接受了完全的性别改造手术,却仍得运用有关染色体结构的检验标准。但是根据欧洲人权法院在 *Goodwin* 一案中所作的判决,现在情况已完全不同。

have completed reassignment surgery must be treated as their new sex for the purposes of marriage.

Section 11(d)

In the case of a polygamous marriage entered into outside England and Wales, either party was, at the time of the marriage, domiciled in England or Wales.

Section 47 of the MCA 1973 allows matrimonial relief or a declaration concerning the validity of a marriage entered into under a law allowing polygamy (matrimonial relief includes nullity, divorce, judicial separation and matters relating to maintenance provisions). However, there have been cases where s 11(d) has not applied.

In *Radwan v Radwan (No 2)* (1973), the husband was domiciled in Egypt and married his first wife, an Egyptian domiciled woman, in Cairo. He later married his second wife, an English domiciled woman, in Paris, intending to enter into a polygamous marriage according to Egyptian law and to live in Egypt. They did live in Egypt, but later moved to, and became domiciled in, England. The second wife later petitioned for divorce.

The court held that, as the second marriage was valid in Egypt and they had intended to live there, it was valid in England. The court said that s 11(d) did not apply.

In *Hussain v Hussain* (1982), even though there was a potentially polygamous marriage, both parties had no capacity to marry again and s 11(d) did not apply; therefore, the marriage was valid.

接受了完全的性别改造手术的变性人,如要结婚,必须以他们手术后的新性别为准。

第 11 条 d 款

在英格兰和威尔士境外缔结的一夫多妻或一妻多夫婚姻,只要有任何一方当事人在缔结婚姻时居住于英格兰或威尔士境内。

1973 年《婚姻诉讼法》第 47 条允许对依据准许一夫多妻或一妻多夫制的法律缔结的婚姻的有效性提供婚姻救济或进行宣告(婚姻救济包括宣告无效、离婚、司法分居和有关扶养提供的事务)。但是,也存在没有适用第 11 条 d 款的案例。

在 *Radwan v Radwan (No 2)* (1973) 案中,丈夫居住于埃及及时与他的第一个妻子,一个居住于埃及的妇女在开罗结婚。后来,他又与他的第二个妻子,一个居住于英国的妇女在巴黎结婚,并打算依照埃及法缔结一夫多妻制婚姻并居住于埃及。他们婚后确实居住在埃及,但后来又搬到英国定居。此后第二个妻子要求与他离婚。

法院判决认为,由于第二个婚姻在埃及是有效的,且他们也曾打算居住在埃及,所以该婚姻在英国是有效的。法院裁定第 11 条 d 款不适用于该案。

在 *Hussain v Hussain* (1982) 案中,虽然存在潜在的一夫多妻或一妻多夫制婚姻,但双方当事人都没有能力再次缔结婚姻,第 11 条 d 款不适用,所以,该婚姻是有效的。