

Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage

In October 1985, the Commission published its Report on [*Private International Law Aspects of Capacity to marry and Choice of law in Proceedings for Nullity of Marriage \(LRC 19–1985\)*](#) as part of the Commission's First Programme of Law Reform.

This Report is concerned with the choice of law rules which should govern the question of the validity of a marriage which has some foreign aspect. The Commission recommended that as a general principle the law of the place of celebration of a marriage should continue to govern the formal validity of a marriage. In applying the law of the place of celebration, it was recommended that account should be taken of the choice of law rules of that legal system even if this results in the application of the law of another country. In cases where parties are unable for good reasons to comply with the law of the place of celebration, the Report recommended that marriage should be formally valid where each party undertakes thereupon to become man and wife.

As far as matters of substantial or essential validity are concerned, the Report recommended that a marriage should be valid when each of the parties has the capacity to marry the other according to the law of that party's habitual residence, including any relevant conflict of laws rules.

The Report considered the position where the parties to a marriage have capacity under the law of their habitual residence, but where the dissolution of a previous marriage of one or other party is not recognized under Irish law. In such cases it was recommended that the subsequent marriage should not be recognized under Irish law whether or not it complies with the requirements of capacity to marry according to the law of the parties' habitual residence.

Where the validity of a marriage is questioned on account of lack of the necessary consent, the Report recommended that the question of the validity of a party's consent should be determined by the law of the country of that party's habitual residence; if the parties do not share the same habitual residence, the marriage should be invalid for lack of consent only when according to the law applying to the party in question that party did not provide the requisite consent.

As regards impotence as a ground of annulment, the Report recommended that petitioner should be entitled to a decree of nullity on this ground if he or she is so entitled according to the law of the habitual residence of either party to the marriage. It was also recommended that the ground of impotence should be determined by the law of the parties' habitual residence at the time of the marriage, rather than by the law of the parties' habitual residence at the time of the nullity proceedings.

It was recommended in the Report that such issues as the entitlement to petition after the other party to a marriage has died, the bars to the granting of a nullity decree, including approbation and ratification, and the issue of retrospection as regards the operation of a nullity decree should be determined by the law of the parties' habitual residence subject to the application of the public policy proviso.

Finally, the Report recommended that where a decree for nullity is sought or obtained before an Irish court, any ancillary financial matters relating to maintenance and property should be governed by Irish law, irrespective of whether other laws are applied to questions arising in the proceedings.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation