

Table of Contents

Acknowledgements	xi
Vorwort	xiii
Abbreviations	xxi
General Introduction	1
Background to the Research.....	1
Statement of the Problem/Research Questions	4
Aim of the Study	9
Scope of the Study.....	9
Research Methodology.....	14
Review of some Relevant Literature.....	14
Structure of the Work.....	20
Chapter: One General Canonical Provisions on Marriage	21
1.1. The Nature of Christian Marriage.....	22
1.1.1. Marriage as a Covenant	22
1.1.2. Marriage as Partnership of whole Life	24
1.1.3. Marriage as a Sacrament	26
1.1.4. Marriage is by its own Nature ordered to the Good of the Spouses and to the Procreation and Education of Children	29
1.1.4.1. The Good of the Spouses	30
1.1.4.2. Procreation and Education of Children	31
1.2. The Essential Properties of Marriage	33
1.2.1. Unity of Marriage	34
1.2.2. Indissolubility of Marriage	36
1.3. The Right to Marry	42
1.4. The Validity of Marriage	44
1.4.1. The Freedom to Marry.....	44
1.4.2. The Matrimonial Consent.....	47
1.4.3. The Canonical Form	51
1.5. The Effects of Marriage.....	58
1.5.1. Matrimonial Bond and Sacramental Grace	58

1.5.2. Equality of the Spouses in Marriage	59
1.5.3. Right and Obligation regarding the Education of Children	61
1.5.4. Legitimacy of Children.....	61
1.6. The Convalidation of Marriage	62
1.6.1. Simple Convalidation	63
1.6.2. Radical Sanation.....	65
1.7. Statutory Law Marriage in Nigeria and Canonical Marriage.....	67
1.7.1. Summary of Statutory Matrimonial Legislations in Nigeria.....	68
1.7.2. Some Implications of Statutory Matrimonial Provisions for Canonical Marriages in Nigeria	71
1.8. Summary	74

**Chapter Two: Canonical Provisions on the Impediment of Disparity
of Cult77**

2.1. Some Clarifications regarding the Terms “Mixed Marriage” and “Disparity of Cult”.....	77
2.2. The Development of Ecclesiastical Legislation on Disparity of Cult Marriage.....	79
2.2.1. Scriptural Foundations.....	80
2.2.2. The Early Church Fathers.....	81
2.2.3. Some Early Synods and Councils of the Church.	84
2.2.4. Development from the Eleventh Century to the Council of Trent.....	87
2.2.5. From the Council of Trent to the 1917 Code	91
2.2.6. The Relative Legislation in the 1917 Code.....	94
2.2.6.1. The Diriment Impediment of Disparity of Cult	95
2.2.6.2. Dispensation from the Impediment of Disparity of Cult	97
2.2.6.3. Obligations of Ordinaries and Pastors regarding Disparity of Cult Marriages	102
2.2.6.4. Disparity of Cult and the Publication of the Marriage Banns.....	102
2.2.6.5. Disparity of Cult and the Canonical form.....	103
2.2.6.6. Disparity of Cult and the Liturgical Form.....	105
2.2.7. From the Second Vatican Council to the 1983 Code	106
2.2.7.1. The Second Vatican Council (1962-1965).....	106
2.2.7.2. <i>Pastorale munus</i> (1963)	108

2.2.7.3. <i>Matrimonii sacramentum</i> (1966)	109
2.2.7.3.1. Conditions for Granting Dispensations	110
2.2.7.3.2. The Obligation of Observing the Canonical Form of Marriage	112
2.2.7.3.3. The Liturgical Form and Mixed Marriages	112
2.2.7.3.4. The Prohibition of Double Religious Celebrations	112
2.2.7.3.5. The Obligation of Local Ordinaries and Pastors	112
2.2.7.3.6. The Abrogation of Can. 2319 §1, 1° CIC/1917	113
2.2.7.4. <i>Matrimonia mixta</i> (1970)	113
2.2.7.4.1. The Nature of the Impediments	116
2.2.7.4.2. Dispensation from the Impediments	116
2.2.7.4.3. The Obligation of the Canonical Form in Mixed Marriages	117
2.2.7.4.4. The Registration of Mixed Marriages	117
2.2.7.4.5. The Liturgical Form and Mixed Marriages	118
2.2.7.4.6. The Prohibition of Double Religious Celebrations	118
2.2.7.4.7. The Pastoral Care of Mixed Marriages	118
2.2.7.4.8. The Abrogation of the Penalties in can. 2319 CIC/1917	119
2.2.7.4.9. The Radical Sanation of Mixed Marriages	119
2.2.7.4.10. Recommendations for Episcopal Conferences	120
2.3. The Impediment of Disparity of Cult in the 1983 Code	120
2.3.1. Description of the Impediment of Disparity of Cult	121
2.3.2. Dispensation from the Impediment of Disparity of Cult	122
2.3.3. Dispensation from the Impediment of Disparity of Cult in Extraordinary Circumstances	127
2.3.4. Doubt Regarding Baptism	128
2.3.5. Disparity of Cult and the Canonical Form of Marriage	129
2.3.6. The Place of Celebration of a Marriage between a Catholic and an Unbaptised Non-Catholic	131
2.3.7. The Disparity of Cult and the Liturgical Form of Marriage	133
2.3.8. The Pastoral Care of Disparate Marriages.	134
2.4. Summary	135

Chapter Three: Basic Legal Principles of Marriage in Islam.....	137
3.1. The Application of Sharia (Islamic) Law in Nigeria.....	138
3.2. The Purpose of Marriage in Islam	141
3.2.1. The Well-being of the Spouses	141
3.2.2. Satisfaction of Sexual Needs.....	142
3.2.3. The Procreation of Children	142
3.2.4. Means of Religious Piety.....	144
3.3. Marriage as a Contract in Islam.....	145
3.4. The Validity of Islamic Marriage	146
3.4.1. Legal Capacity of the contracting Parties.....	147
3.4.2. The Consent of the Parties.....	150
3.4.3. The Marriage Guardian (<i>wali</i>).....	151
3.4.4. The Form of the Marriage Contract (<i>sighah</i>).....	153
3.4.5. The Dower	155
3.5. Polygamy in Islam	158
3.6. The Dissolution of Marriage in Islam.....	162
3.6.1. Divorce at the Instance of the Husband.....	164
3.6.2. Divorce at the Instance of the Wife.....	168
3.6.3. Dissolution of Marriage at the Instance of the Court.....	169
3.7. The Legal Effects of Marriage.....	172
3.7.1. The Creation of Rights and Obligations.....	172
3.7.1.1. The Right to Mutual Inheritance	173
3.7.1.2. The Right/Obligation of Dower	173
3.7.1.3. The Right/Obligation of Maintenance	174
3.7.1.4. The Obligation of <i>Iddah</i>	174
3.7.2. The Legitimation of Sexual Relationships	175
3.7.3. The Legitimacy of Children	177
3.7.4. The Creation of Prohibited Marriage Relationships	178
3.8. Summary	179

Chapter Four: Interfaith Marriage in the Islamic Law	181
4.1. Non-Muslims in Islam	181
4.2. The Marriage of Muslims with Non-Muslims.....	183
4.2.1. The Marriage of a Muslim Man to a Non-Muslim Woman.....	184
4.2.1.1. The Marriage of a Muslim Man to a <i>Mushrikaat</i>	184
4.2.1.2. The Marriage of a Muslim Man with a <i>Kitabiyah</i>	185
4.2.2. The Marriage of a Muslim Woman to a Non-Muslim Man.....	192
4.3. The Legal Effects of Subsequent Religious Disparity on a Subsisting Marriage.....	198
4.3.1. The Legal Effects of <i>Riddah</i> (Apostasy) on a Subsisting Islamic Marriage.....	198
4.3.2. The Legal Effects of Conversion on a Subsisting Non-Islamic Marriage.....	203
4.4. Summary.....	205
Chapter Five: Comparative Analyses of Canonical and Islamic Law Provisions on Marriage.....	207
5.1. Areas of Similarity between the Two Matrimonial Legislations	207
5.1.1. Marriage as a Heterosexual Relationship.....	208
5.1.2. The Preclusion of Temporary Marriages.....	211
5.1.3. The Legitimacy of Children	212
5.1.4. The Rectifiability of some Invalid Marriages	213
5.1.5. Religious Difference as Matrimonial Impediment.....	214
5.2. Areas of Divergence in the respective Matrimonial Legislations	216
5.2.1. Unity versus Plurality of Marriage.....	216
5.2.2. Dissolubility versus Indissolubility of Marriage.....	217
5.2.3. The Obligation of the Spouses towards the Religious Education of Children	219
5.2.4. The Degree of Permissibility of Interfaith Marriages	223
5.2.5. The Question of Matrimonial Dispensations.....	224
5.2.6. The Understanding of Matrimonial Consent vis-à-vis the Role of Third Parties	225
5.2.7. Matrimonial Laws in Relation to the Man and the Woman.....	226
5.2.8. The Sacramentality of Marriage.....	228
5.3. Summary.....	229

Chapter Six: Appraising Catholic-Muslim Marriages in the Nigerian	
Context	231
6.1. Socio-cultural Dynamics and Catholic-Muslim Marriages in Nigeria....	232
6.1.1. The Patriarchal Nature of Society	232
6.1.2. Relationship between Islam and Christianity.....	235
6.1.3. The Consequences of being Unmarried	238
6.1.4. Reactions to Pregnancy Outside Wedlock	240
6.2. Some Juridical Issues arising from Catholic-Muslim Marriages in Nigeria.....	242
6.2.1. Canonical Norms and Disparity of Cult Marriage in Nigeria	244
6.2.2. Islamic Law and Interreligious Marriage in Nigeria.....	247
6.2.3. The Question of Jurisdiction over Marriage.....	248
6.2.3.1. The Implications of Canonical Norms for a Muslim who is Married to a Catholic.....	249
6.2.3.2. The Implications of Sharia Norms for a Catholic who is Married to a Muslim	253
6.2.4. The Conditions of c.1125, 1° CIC/1983.....	255
6.2.4.1. The Faith of the Catholic Party	256
6.2.4.2. The Baptism and Education of Children in the Catholic Church ..	260
6.3. Assessment of some Ecclesiastical Responses to the Challenges associated with the Marriage of Catholics to non-Catholics in Nigeria ...	266
6.3.1. Foreclosure of Permissions and Dispensations	266
6.3.2. Undue Demands or Conditions for the Non-Catholic Party	269
6.3.3. Sanctions to Parents for the Mixed or Disparate Marriage of their Children	270
6.4. Summary.....	272
General Summary and Conclusion.....	275
Bibliography.....	283