COMMENT

MARRIAGES OF CONVENIENCE IN AUSTRALIA[1]

Several recent cases in Australia have raised once again the recurrent historical problem of marriages of convenience. A "marriage of convenience", or "sham marriage", or "limited purpose marriage" occurs when a man and a woman enter a full status legal marriage and yet at that time one or both of them do not intend to fulfil some or all of the important legal and social duties culturally expected of a normal marriage. That is, although the parties consent to the ceremony or commencement of the marriage, they do not fully consent to its cultural and legal functions. Examples include marriages where at the time of the ceremony one or both parties have reservations about sexual intercourse, cohabitation, procreation, or intend to marry solely or predominantly for the purposes of satisfying immigration or emigration laws, acquiring money, Tertiary Education Assistance Scheme grants or minimising taxation.[2]

As the existence of the status of marriage is a prerequisite to numerous rights and benefits in Australian society, it is important to know how decision-makers and judges will respond to the phenomenon of marriages of convenience. The most frequently cited overseas case in this area is the decision of *United States* v. *Rubenstein*.[3] There the parties went through a ceremony of marriage prescribed by New Jersey law, but did so solely for the purpose of preventing deportation of the wife. She paid the husband $200 for his co-operation. The parties had agreed never to cohabit and the marriage was not consummated. However, the lawyer who had arranged the marriage was charged with the crime of conspiracy to bring an alien into the country by misrepresentation and concealment. One of the lawyer's arguments in defence was that since the marriage was valid, he had made no misrepresentations. However, in a famous judgment, Judge Learned Hand held *inter alia* that the parties had not consented to enter the marital relationship as it is generally understood and therefore no marriage occurred. Thus the defendant's criminal conviction was affirmed. It is important to note an additional comment in *obiter dictum* made by Judge Learned Hand. He stated that since the immigration legislation was concerned primarily with certainty of

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[1] For an historical and comparative study see J. H. Wade, "Limited Purpose Marriages" (1980) Modern Law Review (forthcoming). Parts of this comment are adapted from that article.

[2] *E.g. U.S.* v. *Rubenstein* (1945) 151 F. 2d 915; *Silver* v. *Silver* [1955] 2 All E.R. 614; *H.* v. *H.* [1954] P. 258; *Szechter* v. *Szechter* [1970] 3 All E.R. 905; *Kokkalas* v. *Kokkalas* (1965) 50 D.L.R. (2d) 193; *Johnson* v. *Smith* (1968) 70 D.L.R. (2d) 374, overruled by *Iantsis* v. *Papatheodrou* (1971) 15 D.L.R. (3d) 53; *Gardner* v. *Gardner* (1970) 75 W.W.R. 667; *Feiner* v. *Demkowicz* (1974) 42 D.L.R. (3d) 165; *In the marriage of Deniz* (1977) 31 F.L.R. 114; *In the marriage of Suria* (1977) 29 F.L.R. 308; *McKenzie* v. *Singh* (1973) 29 D.L.R. (3d) 380, [1972] 5 W.W.R. 387; *Truong* v. *Malia* (1977) 25 R.F.L. 256; Leidigh, "Defense of Sham Marriage Deportations" (1975) 8 University of California at Davis Law Review 309.

[3] (1945) 151 F. 2d 915.

economic support for the alien, suppression of the fact that the parties "intend that the responsibility [for support] shall end as soon as possible"[4] may well be a wilful evasion of the legislation, even though the marriage is declared to be valid. Thus the clear problem arises that even though a marriage of convenience is called "valid" in the *matrimonial* jurisdiction, it may not be a "proper" or "satisfactory" valid marriage in some *other* jurisdiction concerned with, say, immigration or taxation.

The judicial approach in this American case can be contrasted with a recent Australian decision. In *R.* v. *Cahill and Ors*,[5] three Chinese males planned to enter into marriages of convenience with Australian females in order to attempt to influence the Minister's discretion to allow them to remain in Australia. Only one marriage was actually celebrated before the police intervened. The charge of conspiracy to prevent the enforcement of the Migration Act 1958 (Cth)[6] was dismissed by the N.S.W. Court of Appeal as the defendant's plan did not affect the Minister's right to deport them whether married or not. Moreover it was held that *for the purposes of criminal law*, going through a marriage ceremony even with mental reservations enables one to say honestly, "I am married", without being guilty of criminal deception. It was apparently conceded by all parties that the actual or contemplated marriages were "valid" marriages at law, thereby not really testing the argument accepted in *Rubenstein's* case.

Street C.J. also expressed reluctance to investigate the *degree of immorality* (as compared to the degree of invalidity already discussed) attached to these arrangements.[7] The degree of immorality, as compared to the degree of invalidity, was relevant to the possibility that this may have been a criminal conspiracy offensive to public morals and thereby a conspiracy to achieve a lawful object by unlawful means. Street C.J. was thus persuaded by the general difficulty in a pluralistic society of deciding what are essential and non-excludable purposes of marriage, and then using such a vague standard of morality as the basis for "criminal" liability. However, it is important to note that even though the court would not impose criminal sanctions for entering a marriage of convenience, allegedly because it is too difficult to define immoral purposes, conversely the Minister of Immigration and Ethnic Affairs when imposing the sanction of deportation could (and did) definitely take into account how immoral or improper was the marriage of convenience. That is, the socially perceived propriety of any marriage, as seen even through the eyes of the reasonable person in the pluralistic melting pot, will have different consequences in different areas of law. Of course, it is very difficult to discuss the boundaries of proper and improper immigration marriages, when the administrative decision-maker has an undefined discretion, hears evidence in private, is very cautious

[4] *Id.* 918.

[5] (1979) 22 A.L.R. 361.

[6] Crimes Act 1914 (Cth), s. 86(1)(b).

[7] "I fail to see what justification there is for the *criminal law* thus seeking to lift what might be described, borrowing from another field, as the bridal veil" (1979) 22 A.L.R. 361, 364-365.

about issuing guidelines for his decision and his decision is not usually subject to review by an appellate tribunal.[8]

The conclusion that different legal jurisdictions may assign different consequences to limited purpose marriages is also illustrated by the recent case of *Re Kannan and Minister for Immigration and Ethnic Affairs*.[9] There the applicant and his wife appealed to the Administrative Appeals Tribunal[10] to review the decision of the Minister to deport the applicant.[11] At a time when Kannan had overstayed his temporary entry permit to Australia, he was convicted of a drug offence and imprisoned for six months. On the day he left prison he married the girl with whom he had been living for the three months prior to his conviction. Davies J. concluded that "the principal factor which influenced the choice of the particular date for the marriage was the thought that, if the marriage took place, it would be less likely that Mr Kannan would be deported".[12] However, six months after his release from prison, a deportation order was made pursuant to section 13 of the Migration Act 1958 (Cth). The appeal against the deportation order was successful for the primary reason that the marriage was "recognised".[13] That is, the judge considered it to be against the wife's personal interests to be put under any pressure to follow her deported husband back to Malaysia. It seems likely that this decision was influenced by two special facts in the case. First, the judge believed to some extent the parties' subjective testimony that this was not *only* a limited purpose marriage, even though predominantly it was such a marriage.[14] Furthermore, he believed that the wife would possibly/probably follow her husband if he was deported to Malaysia. Secondly, there was clear objective evidence that the parties had once cohabited and were now continuing to cohabit as man and wife. This can be compared with the ephemeral and financial relationship which existed between the "married" parties in *Cahill's* case. However, where both parties have a vested interest in misrepresenting their factual marital situation, there are obviously special difficulties in rebutting such collusive stories. Snooping neighbours, itinerant informers, and dawn

[8] Granting a right of appeal in immigration and deportation decisions leads *inter alia* to the dilemmas of a massive backlog of appeals and then the use of appeals as a tactic of delay. At present in Australia, only a limited right of appeal exists, namely in those cases where the potential deportee is being deported due to a criminal conviction. The Administrative Appeals Tribunal Act 1975 (Cth), Schedule, Part 22, enables review of decisions under ss. 12-13 of Migration Act 1958 (Cth) *e.g. Re Kannan and Minister for Immigration and Ethnic Affairs* (1979) 23 A.L.R. 631. The Administrative Review Council is now considering extending rights of review of decisions under the Migration Act. See also Case Note, *Drake* v. *Minister for Immigration and Ethnic Affairs infra* p. 93.

[9] (1979) 23 A.L.R. 631.

[10] Administrative Appeals Tribunal Act 1975 (Cth), Schedule, Part 22.

[11] *Id.* Part 22(3). The Tribunal's review of a decision under the Migration Act 1958 (Cth), ss. 12, 13, 48 only has the status of a recommendation, though the writer understands that the Minister almost invariably complies with a recommendation of the Tribunal. *Cf.* s. 43 of the Act whereby the Tribunal's decision normally is legally binding.

[12] (1979) 23 A.L.R. 631, 639.

[13] *Id.* 651-652.

[14] *Id.* 639, 653.

raids by government agents are scarcely attractive methods of detecting collusion. Once again, some degree of abuse of the legislation may be a necessary price to avoid the expense and adverse results of attempting full-scale enforcement.

Apart from the relative secrecy of administrative decisions, there is another reason for the recent lack of judicial authority on marriages of convenience. Numerous reported cases in the twentieth century which could well have been argued under the principle of mental reservations have been argued and decided under the alternative categories of duress and occasionally fraud.[15] The additional elements of fraud and/or duress are of course not without difficulties. For example, what degree of duress is necessary? How explicit and serious must the fraud be, in order to be legally operative?

There are two recent Australian cases involving limited purpose immigration marriages which were both argued under the concept of fraud. In *In the marriage of Deniz*[16] the respondent, a Turkish male, was seeking permanent resident status in Australia. He thought that marriage to an Australian citizen would improve his position. Therefore, he obtained permission from the applicant's Lebanese parents and convinced the applicant that he loved her, whereupon she left high school and married him. The marriage was never consummated and the wife, upon being told of his motives, suffered a nervous breakdown and attempted to commit suicide. The husband's residency application, lodged immediately after the ceremony, was of no avail and he was returned to Turkey.[17] The female applicant sought a nullity decree on the ground of fraud under section 23 of the Marriage Act 1961 (Cth). There was evidence that divorce would attach a serious stigma to a woman from her cultural background and she testified that she would rather die than be divorced. Frederico J. granted the nullity decree. It is submitted, with respect, that even though the case raises some difficult concepts, it was a very proper result on the facts.

At least four comments need to be made concerning *Deniz*. First, Frederico J. argued that the specific word "fraud" contained in the legislation ought to be given a broader meaning than merely fraud

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[15] *E.g. H.* v. *H.* [1954] P. 258; *Szechter* v. *Szechter* [1970] 3 All E.R. 905 (void emigration marriages due to absence of real consent due to fear for safety in communist regimes).

[16] (1977) 31 F.L.R. 114.

[17] The Department of Immigration and Ethnic Affairs apparently takes the attitude that whether the Family Court labelled the marriage "valid" or "invalid" is almost irrelevant; the Department makes its own decision whether it is a proper or improper marriage. "There is growing evidence that people unable to meet normal entry requirements are misrepresenting themselves as fiances in order to gain approval for migration. A high proportion do not marry on arrival. . . . [P]rocedures will be revised to help detect and exclude those who are engaged in such deceit and exploitation" *per* The Hon. M. J. R. MacKellar, M.P., Federal Minister for Immigration and Ethnic Affairs, Ministerial Statement "Immigration Policies and Australia's Population" H.R. Deb. 7 June 1978, Vol. 109, 3156; also Press Release, Minister for Immigration and Ethnic Affairs 30 June 1978.

concerning the nature of the ceremony[18] or the identity of a party[19] as these kinds of cases can adequately be decided under the statutory heading of "mistake".[20] That is, all the reported marital fraud cases in the past could have been decided under the category of mistake. Therefore if in 1975 the legislature again used both the words "fraud" and "mistake", it must have intended fraud to be given a broader meaning today than in the reported English cases. It should not be readily taken to be using surplus and redundant words. This argument is somewhat strained as all categories of inter-spousal marital fraud have been and always will be also unilateral mistakes whether as to identity of a party, nature of ceremony *or* function of marriage. That is, the word "fraud" will always in a sense be surplus when used alternatively to the word "mistake". Thus, more realistically, this case represents a mini-resurgence, by judicial creativity, of a broader concept of legally operative marital fraud. Secondly, it was held that it is not enough that the false statements subjectively influenced the applicant, but also they must be objectively of a very serious nature.

> [T]here would be general consternation if an application was granted on the basis of fraud by reason of one party deceiving the other as to being possessed of natural teeth. The case of the person who marries to gain money rank or title as distinct from the more usually professed reasons would also cause concern. Clearly the fraud relied on must be one which goes to the root of the marriage contract.[21]

Of course, what amounts to a fundamental fraudulent misrepresentation concerning the purpose of the marriage will vary with time and culture. Thirdly, events after the marriage ceremony were such that the nullity remedy was facilitated, rather than hindered. There was no consummation;[22] the respondent's subjective intentions were completely confirmed by his objective behaviour, namely, no cohabitation and an immediate residency application; and the court's sympathy rested with the unfortunate, deceived, suicidal young girl. Fourthly, it was suggested by the judge that this decision had the effect of preserving and protecting the "institution of marriage".[23] It is not clear what that statutory phrase means, or how a decision which avoids fraudulent marriages affects the "institution of marriage".[24] At least it means that a phrase such as

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[18] *Kelly* v. *Kelly* (1932) 49 T.L.R. 99; *Mehta* v. *Mehta* [1945] 2 All E.R. 690.

[19] *Allardyce* v. *Mitchell* (1869) 6 W.W.&a'B (I.E.&M.C.) 45; *C.* v. *C.* [1942] N.Z.L.R. 356.

[20] Marriage Act 1961 (Cth), s. 23(1)(d)(ii). The trial judge's suggestion that a narrow interpretation of operative fraud has derived from "ecclesiastical" principles may be true of recent Protestant principles, but otherwise depends on which church, when and where; *e.g.* H. Swinburne, *A Treatise on Spousals* (published in 1686, written before 1621; republished Garland Publishing Inc. 1978) 140-148; M. Rheinstein, *Marriage Stability, Divorce and the Law* (1972) 21, 174-175.

[21] (1977) 31 F.L.R. 114, 116-117.

[22] Analogised to "total failure of consideration", *id.* 117.

[23] The duty to protect the "institution of marriage" is imposed on the Family Court by s. 43 of the Family Law Act 1975 (Cth).

[24] Especially when void marriages have many of the same *legal* rights and duties attached, though probably not the same social rights and duties, as full status legal

"full-status legal marriage" has a slightly narrower meaning as it now excludes a new category of fraudulent marriages.

The case of *Deniz* can readily be compared with that of *In the marriage of Suria*.[25] There the applicant female flew to Manila and went through a ceremony of marriage with a Filipino male, a former pen-friend. The applicant, who was almost totally blind, suffered a nervous collapse on the night after the wedding and returned alone to Australia eight days later. The respondent husband was subsequently allowed to come to Australia for several weeks during which time he lived with the applicant and her family. He was then required to leave when his visa expired and was refused permission to re-enter. The applicant female sought a decree of nullity on the grounds of fraud or duress. She failed on both. Frederico J. distinguished *Deniz* by emphasising that first, even though the respondent sought the marriage dominantly for immigration purposes, that was not his *only* purpose given his earlier protestations of love. Secondly, his post-marriage conduct, including cohabitation and an attempt to consummate the marriage, gave objective verification to his less than limited intentions. Thirdly, in order to amount to fraud there must be false statements which actually mislead whereas here, the respondent had mentioned prior to the ceremony that *one* of his motives, though by implication not his dominant motive, was to gain access to Australia. Thus although there was a falsehood about the relative weight of his motives, there was some degree of notice of his mixed motives.

These four cases raise the question whether legislation exists or should be passed to give marriages of convenience second class status in some or all areas of law. However, because Australia is a federation, the question arises concerning which legislative body has constitutional power over marriages of convenience. In answer to this question it seems certain the Federal Parliament has power to define both the concept and at least some consequences of a limited purpose marriage under the federal "marriage" power.[26] The federal power over marriage has been held to include clearly power to define the concept and consequences of a "void marriage",[27] especially when these are in accordance with recurrent patterns in English legal history. Federal Parliament has also purported, without constitutional challenge so far, to specify legal rights and duties arising from some polygamous

marriages; *e.g.* D. Tolstoy, "The Validation of Void Marriages" (1968) 31 Modern Law Review 656.

[25] (1977) 29 F.L.R. 308.

[26] S. 51(xxi) of the Constitution. Nevertheless, the legal definition and consequences are not without limits. They would have to be within some core historical meaning of the concept of marriage, *e.g.* Lane, "Federal Family Law Powers" (1978) 52 A.L.J. 121; *A.G. for Victoria* v. *Commonwealth* (1962) 107 C.L.R. 529, 580 ("the very nature of marriage"), 581 ("the essence of the estate of matrimony"), 581 ("most systems of law"), 589 ("the essence of the institution of marriage", "inherent"), 576 ("Constitutional interpretation is affected by established usages of legal language"), 577 ("The usage of 1900 gives us the central type; it does not give us the circumference of the power").

[27] *E.g. A.G. for Victoria* v. *Commonwealth* (1962) 107 C.L.R. 529. See now ss. 5(4), 60, 71 of the Family Law Act 1975 (Cth); s. 23 of the Marriage Act 1961 (Cth).

marriages,[28] despite repetitive judicial statements over a long period of time that such arrangements were not marriages at all.[29]

However, though possessing the constitutional power to do so, the Federal Parliament has not made any specific provision for limited purpose marriages either relating to the traditional areas of family law or elsewhere. The present grounds for avoiding a marriage are set out in section 23 of the Marriage Act 1961 (Cth) which provides that a marriage is void on five grounds "and not otherwise". Thus conceptually, a limited purpose marriage *per se* is presently not void although it may satisfy the alternative ground previously discussed, namely where "consent of either of the parties is not a real consent because it was obtained by duress or fraud".[30]

No doubt it could be argued that a limited purpose marriage could be declared "invalid" rather than "void" as such a procedure is available.[31] This argument can be supported by the proposition that some meaning should be given to the statutory words "marriage"[32] and "union".[33] For the legislature to state that "a marriage is void . . ." begs the question of what is a "marriage". However it is very unlikely that judges would create such a distinction between void and invalid marriages, and thereby exercise declaratory powers over various "invalid" marriages, at least when administering the Family Law Act 1975 (Cth). It seems that the Family Law Act is using the concepts of "void" and "invalid" interchangeably, at least for marriages governed by Australian law. Moreover, even if the Family Court were willing to declare a marriage invalid, as compared to void, this would not provide a foundation for ancillary relief. This is because jurisdiction over property, maintenance and custody expressly only arises ancillary to *void* marriages, not invalid ones.[34]

If limited purpose marriages are not affected by the present law of nullity, are they of relevance to other areas of law under the Family Law

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[28] *E.g.* Family Law Act, s. 6; Matrimonial Causes Act 1959, s. 6A (now repealed by Family Law Act s. 3); *A.G. for Victoria* v. *Commonwealth* (1962) 107 C.L.R. 529, 576-577 *per* Windeyer J.

[29] *E.g. Hyde* v. *Hyde and Woodmansee* (1866) L.R. 1 P.&D. 130 (a potentially polygamous marriage was not one recognised by English law for the purposes of granting a divorce); *Sowa* v. *Sowa* [1961] 1 All E.R. 687 (potentially polygamous marriage not recognised for the purposes of maintenance application); *Risk* v. *Risk* [1951] P. 50 (potentially polygamous marriage not recognised for the purposes of granting a nullity decree).

[30] Marriage Act 1961 (Cth), s. 23(1)(d)(i).

[31] Family Law Act, s. 4(1), "matrimonial cause" means *inter alia* "(b) proceedings for a declaration as to the validity of a marriage", and in such proceedings "the court may make such declaration as is justified" (s. 113).

[32] Marriage Act, s. 23.

[33] Family Law Act, s. 43(a): "The Family Court shall . . . have regard to the need to preserve and protect the institution of marriage as the *union* of a man and a woman to the exclusion of all others voluntarily entered into for life" (italics added).

[34] Family Law Act, ss. 60, 71. In England, it seems that there would be the additional problem that incidental relief cannot be granted ancillary to a declaration, as compared to a *decree*. *E.g. Kassim* v. *Kassim* [1962] 3 All E.R. 426, 431-432; *Corbett* v. *Corbett* [1970] 2 All E.R. 33, 50-51. No such distinction is made in the Australian Family Law Act.

Act such as divorce, property, custody and maintenance? In these areas of law a judge could either refuse to exercise jurisdiction, or in the exercise of jurisdiction take into account the nature of the marriage. It is submitted that the former course is highly unlikely today even though in the past it has been common for English judges to refuse to exercise jurisdiction over "improper" (usually polygamous) marriages.[35] Thus, even though there is power to stay any proceedings,[36] it seems to be very unlikely that a judge would refuse to hear an application concerning divorce, finances or custody on the ground that this was a "valid" though improper, tainted, or limited purpose marriage.

Nevertheless, it is certain that while actually exercising jurisdiction under the Family Law Act, a judge would take into account, wherever possible, the nature of the marriage. This would then affect the exercise of his discretion to some extent. However, there is no readily available discretion to refuse to grant a dissolution of a limited purpose marriage. Some judges may be inclined to punish the practice of entering a limited purpose marriage by refusing a divorce and thereby perpetuating the bonds of matrimony[37] (and acrimony). Some practices might become particularly irritating, such as marriages and divorces effected in order to avoid the payment of State stamp duties.[38] Nevertheless it is likely that judges would grant the divorce and refer the evidence of the marriage of convenience to the appropriate taxation or immigration authorities for possible action under their own quasi-criminal legislation.

By way of contrast however, evidence of a marriage of convenience as planned, and especially as executed, will no doubt be relevant to the manner in which judicial discretion is exercised in a dispute concerning maintenance,[39] division of property[40] and, in rare cases, custody.[41] The non-functioning nature of most limited purpose marriages may well prompt a judge to award an applicant spouse no maintenance or property whatsoever.

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[35] See *supra* n. 29 and generally Sykes and Pryles, *Australian Private International Law* (1979) 230-238.

[36] *E.g.* Reg. 16 of the Family Law Act Regulations, "[a] Judge or Magistrate may, at any time after the institution of proceedings, direct a stay of proceedings upon such terms as he thinks fit"; Family Law Act, s. 118, "[t]he court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings and make such orders as to costs as it thinks fit". Possibly also contained in the inherent power of the court to dismiss or stay frivolous, vexatious or abusive proceedings *e.g. In the marriage of Tansell* (1977) 31 F.L.R. 87, 97.

[37] Power for such a practice could, with strain, be found in s. 43, "the need to preserve and protect the institution of marriage". *Cf. Penny* v. *Penny (No. 2)* (1966) 8 F.L.R. 128 (contrary to public interest under s. 37 of Matrimonial Causes Act 1959 (Cth) to grant a divorce on the ground of separation where the petitioner could not meet his financial obligations to his first and second wives and wished to marry a third wife).

[38] Family Law Act, s. 90; N.S.W. Law Society Journal, Apr. 1977, 90. The Family Law Council, *Third Annual Report* 1979 (A.G.P.S.) 29-32.

[39] *E.g.* Family Law Act, s. 75(2)(j), (k), (o).

[40] *Id.* s. 79(4)(a), (b).

[41] *Id.* s. 64(1). The nature of the limited purpose agreement may assist in identifying the less qualified custodian.

It is suggested that marriages of convenience will increase in number in Australian society as such an array of benefits is potentially available from the marriage status, detection involves snooping and expense, the marriage status can readily be discarded when its function is served, and public sympathy often rests with the parties who are using their status to beat "the system". Moreover, most judges and administrators who must decide upon the meaning of "marriage" for the purposes of the legislation before them will normally be unwilling to open the Pandora's box attached to marriages of convenience. Administratively, it is far more convenient to promote the idea "if married for one purpose, then married for all". If clear evidence of a limited purpose can be elicited, then in many situations this will in itself not affect the status of marriage but may be very relevant to the outcome of the case. That is, limited purpose will often not affect jurisdiction, but will affect discretion.[42] However, it should be noted that there are situations where once the parties are classified as "married", there remains no apparent discretion in the court to deny the "married" person a legal right because of his/her limited purpose.[43] Presumably many judges and administrators in these latter areas will feel constrained by precedent to "recognise" the marriage of convenience as a full status marriage no matter how morally repugnant this course may be to them.

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[42] *E.g.* married but still deported; married but still no entitlement to maintenance, property division or Testators Family Maintenance benefits; married, but intestacy claim subordinated to competing T.F.M. claims of relatives; married but no increased Tertiary Education Assistance Scheme grant, *e.g.* Student Assistance Act 1973 (Cth) and 1974 Rules thereunder. A higher student grant is paid to married students under the T.E.A.S. The difficulties of expense and civil rights have supposedly prevented detection of the alleged widespread limited purpose student marriages.

[43] *E.g.* a married person is entitled to a share of an intestate spouse's estate; a married person is competent but not compellable as a criminal witness against his/her spouse *e.g. Achina* v. *People* (1957) 307 P. 2d 1083. (Parties held not to be married and therefore wife compellable to testify against husband. Court expressly held that its decision was limited to the application of the evidence statute, thereby implying that for other purposes the parties' marriage might have been recognised.) *cf. Hoskyn* v. *Commissioner of Police for the Metropolis* [1978] 2 All E.R. 136. (One year after knife attack, assailant male and his victim married only two days before his trial. Held that victim wife not compellable; possibility of marriage of convenience apparently not discussed.)

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