

FOREIGN MARRIAGES

A question I have been asked recently concerned the validity in Australia of a foreign marriage, and in particular the validity of a polygamous marriage - that is, a marriage of one person to more than one other person. This question is becoming increasingly important as larger numbers of people come to settle in Australia from countries with legal systems that permit polygamous marriage.

This question has been considered recently by the Full Court of the Family Court of Australia, which has made the matter clearer (1).

In this case the Court held the general rule is that a foreign marriage which was valid under the law of the country in which it took place will be recognized as a valid marriage in Australia, unless it falls within one of a number of exceptions (2). The fact that the marriage is **potentially** polygamous is not one of the exceptions. That is, a foreign marriage will not be invalid because, under the foreign law, it may become polygamous later on.

In this case the Court has examined sections 88C and 88D of the Marriage Act 1961 (Commonwealth) in detail. These sections start with the general proposition that a foreign marriage is valid in Australia if it was valid according to the law of that foreign country at the time it was entered into, even if it was potentially polygamous, unless:

- * at the time of the marriage, either person was validly married to someone else; or
- * where one of the parties at the time of the foreign marriage was domiciled in Australia, either of the parties had not attained the age of 18 years; or
- * the parties are within a prohibited relationship. This is defined in section 23B of the Act to mean a marriage between a person and an ancestor or descendant of the person, or between a brother and a sister; or

- * the consent of either of the parties was not a real consent because it was obtained by duress or fraud, one party was mistaken as to the identity of the other party or the nature of the ceremony performed, or the party was mentally incapable of understanding the nature and effect of the marriage ceremony (s 23 (1) (d) (i) (ii) and (iii) Marriage Act).

In summary, unless the foreign marriage falls within one of these exceptions listed, it will be recognized as a valid marriage in Australia, even if it is potentially polygamous. However, if it **actually** polygamous, it will not be valid in Australia if at the time of that second or subsequent marriage one of the parties is already married to someone else.

NOTES:

1. Ghazel & Ghazel and Anor. (2016) FLC 93 - 693
2. Ghazel & Ghazel, paragraphs 35 and 36

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