



CHAPTER 9

FAMILY LAW AWARENESS AMONG FAMILIES WITH PERSONS LIVING WITH DISABILITIES

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Introduction

Law refers to stipulated code of conduct that is enforceable by any instituted authority guiding and regulating people's coexistence in a society (Ezeilo, 2000). It is designed to protect individuals' their performance of assigned responsibilities. Law operates in Nigeria at different levels of government. Some laws operate only at the federal level, others at the state level and yet others at the local government level (Ezeilo, 1995).

At the federal level, under civilian democratic dispensation, laws are enacted by the National Assembly (Senate and House of Representatives) and consented to by the President. Such laws are called Acts (Nwogugu, 2001). Under the military regime, federal laws were known as decrees. At state level, laws under civilian administration are known as laws while those of military are called edicts. Laws enacted by the local governments whether under civilian or military regime are known as Bylaws (Odike & Agu, 2003). Other types of laws include statute, ordinances and proclamations. Statute is a general name given to any law passed by a legislative body (Lowe, 2005). The word Statute is used more appropriately to refer to law regulating field of endeavour, such as company law, criminal law and marriage law. Federal laws operate in every state in Nigeria while state laws either apply to particular state or may include other neighbouring states (Odike & Agu, 2003). In Nigeria, there are over forty federal laws regulating various aspects of human endeavour. These include among others, those relating directly to the family among which are, the Matrimonial Causes Act (MCA) and Marriage Act (MA) regulating family and marriage institution. These constitute the family law.

Family law is a branch of law that deals with the issues relating directly to the family (Nwogugu, 2001). Family law is an area of the law that deals with family - related issues and domestic relations which include spousal abuse, legitimacy, adoption, child abuse and abduction, divorce, property settlement, alimony and parental responsibility (Fulchiron, 2005). Family is the smallest unit in the social structure of every society and often is made up of person's united by blood or adoption, which may be characterized by common residence and economic cooperation. Family Law generally covers all matters related to the rights of spouses, parents and children. Family law is an area of divorce, dissolution of



domestic partnerships, legal separation, nullity, parentage actions, child custody and visitation, child support, spousal support (often called alimony), adoption, domestic violence, emancipation of minors, family mediation, pre-marital and post-marital agreements, cohabitation agreements, contract actions between unmarried partners and property rights between spouses (Hale, 2002). The family laws are expected to empower family members to function peacefully and effectively in the family and society. It thus, becomes vital that family members should be aware of the family laws and avail themselves of the benefits embedded in the laws. This calls of a family law awareness programme, which should be at the disposal of families.

Awareness involves knowledge of a particular subject or improve people's knowledge. In this context, family law awareness is a process of improving people's knowledge of family law. Family law awareness programme should be at the disposal of family.

Persons with disabilities are people affected with one or more types of disability. In general a person with disability is someone who has a physical, mental or emotional condition that keeps her from living a social/ functional life which is deem to be normal for their peers. Some of the terms used for a person with disability are: disabled person, physically challenged person, handicapped person, divyangjan, differently- abled person, person with special needs- used mostly for persons with mental, intellectual or developmental disabilities and special person.

Home Economists should also be aware of these laws since their field of study focuses on the welfare of individuals and families. They should be able to promote such programme among families. Family law awareness should be designed to inform families about family law and equip them with basic knowledge, skills and attitude they need in other to avail themselves of the expected benefits from the relevant laws. Family law awareness means raising consciousness of terrible abuse, spousal abuse and tenant abuse to family members.

Lack of family law awareness among families living with disabilities can give rise to various forms of abuses and denial of rights in families. Problems such as; spousal abuse; child labour, abuse and neglect; maltreatment of widows; marriage breakdown; landlord and estate agents maltreatment of tenants; etc are often common results of lack of awareness of family law (Owodunmi 1991; Anyanwu 200; Egburuonu 2007; Okolie 2009,&Adetaoyo 2009).

Family law awareness programme ought to focus on ways and means of intimating people with knowledge, attitudes and skills on issues relating to family law, such as marriage, consumer rights on electricity, tenancy, child rights law, guardianship, legitimacy, succession and statutory adoption. Such a programme would comprise of a set of objectives, content, implementation strategies (delivery systems) and evaluation activities (McNamara 1999; Tessmer 1995& Weiss, 1998).

The objectives of family law awareness programme would indicate what the family members would be able to do as a result of exposure to such programme. The content of the programme would include the specific family laws. These laws



include; law governing the relationship of husband and wife (Marriage Act), dissolution of marriage, judicial separation, maintenance and custody (Matrimonial Causes Act). Other laws deal with the relationship between parents and child, legitimacy act and statutory adoption. Third, guardianship, child rights law and criminal code law. There are yet the family laws, which deal with the family and property (Administration and Succession Estate of Deceased Person's law), law of consumer protection, electric power reform act, landlord and tenant law (Nwogugu 2001; Burton 2003 & Ifemeje 2008). The awareness programme must also make provisions for implementation of the programme. This necessitates the use of appropriate strategies or delivery systems.

The implementation strategies or delivery systems would include methods, facilities, fora and related resources that will facilitate the implementation of the awareness programme. Ezeilo (2001), suggested delivery systems such as conferences, seminars, workshops and outreaches. Family law Awareness programme could be implemented by various law enforcement bodies and related groups such as association of lawyers, law enforcement agents such as Policemen, Nigerian Civil Defence Corps, Social welfare officers, human rights activists, families with persons living with disabilities and Home Economics teachers.

The thesis statement of this chapter are;

1. the family law awareness among families with persons living with disabilities
2. various forms of abuses of family law Awareness on families with person living with disabilities
3. denial of rights on families with persons living with disabilities
4. the importance of Family law Awareness on families with disabilities
5. implication for persons with disabilities
6. Conclusion
7. References

1. Family law

Family law is an area of the law that deals with family related law issues and domestic relations which include; spousal abuse, legitimacy, adoption, child abuse and abduction, divorce, property, settlement and alimony and parental responsibility (Burman 2005).

Family law generally involve issues surrounding divorce such as the termination of marital status determining child custody, child support and spousal support and division of the parties marital property.

In Nigeria, the law regulating the celebration of marriage contracted under the act and its incidents are contained in the marriage Act (Odike & Agu, 2003). Marriage act contains the necessary procedural steps to be taken in order to end up with a legally recognised valid marriage (Nwogugu, 2001).

Matrimonial Causes Act deals with the disputes that may arise in marriage, their proof and how the court is empowered to settle them. Nullity has its origin in



ecclesiastical law and approaches the marriage on the basis that it is an imperfect marriage and should therefore be annulled rather than dissolved. Voidable marriages are ended by a decree under the law of nullity (Adesanya, 1973). Nullity may be used either to secure a freestanding nullity decree or in the alternative in a divorce petition in cases of factual overlap. Voidable marriages (which are valid until avoided) must be distinguished from void marriage which are void from the start and need no decree, though one may be desirable for various reasons. A voidable marriage will always need a decree to null it (Burman, 2005).

Criminal law is the law of crime. A crime is an offence, an act or Omission punishable by the state. There are more than 600 offences that are punishable with various forms of imprisonment. Criminal offences are classified in terms of seriousness as follows: Felonious, misdemeanour and simple offences.

Felonious offences: these are imprisonment from 3 years to life imprisonment. They are capital offences misdemeanour is an offence declared by law which ranges from 6 months to 2 years. Simple offences are offences declared by law which ranges from one day to 6 months. There are some people that are involved in any offence they may be guilty or may be charged for committing it. "ignorant of law is not an excuse". The criminal law imposes a duty on the parents or a guardian of a child to provide necessities is reckless or careless and death occurs, the offence is manslaughter. On the other hand, where the willful neglect to supply necessities is accompanied by an intention to cause death and death occurs, the offence will be murder (Nwagugu, 2001).

Section 70 of criminal code states that any person who takes part in an unlawful assembly is guilty of Misdemeanour and is liable to imprisonment for one year. Section 71 of criminal code states that any person who takes part in a riot is guilty of a felony and is liable to imprisonment for three years. Section 80 of criminal code states that any person who goes armed in public without lawful occasions such as matmer as to cause terror to any person is guilty of a misdemeanour and is liable to imprisonment for two years and his arms maybe forfeit. Criminal law offers means by which the state can prosecute the perpetrator. Examples of crime include murder, assaults, fraud and theft. Exceptional circumstances defences and apply to specific acts such as killing in self-defence or pleading insanity. Criminal law offences are viewed as offences against not just individual victims but the community as well developed countries still condone capital punishment for criminal activity, but the normal punishment for a crime with the imprisonment fines, state supervision (such as probation or community service).

A child is legitimate at birth if born in lawful wedlock. In Nigeria, "lawful wedlock" includes not only marriage under the marriage Act but also customary law marriage and Muslim marriage. These types of marriage by the law of this country is legal and the issue of such marriages are legitimate (Nwogugu, 2001). To be legitimate at birth the parents of the child must be lawfully married either at the



time of his birth. Consequently child conceived during marriage but born after its dissolution is legitimate.

Tenants Rights and landlord disclose publicly are governed by state property. A lease or a rental agreement defines the length of the rental term, the price paid, penalties for the late payment and the amount of notice required before either the landlord or the tenant can cancel the lease. The landlord law involves the duty to maintain the property in a reasonable condition in view of all the circumstances. Additionally, state or local landlord tenant law sets the requirements for evicting a tenant which may occur for only a limited number of reasons before the tenancy expires (Obi-Okoye, 1991:393).

Adoption is the process by which the legal relationship between a child and his natural parents is severed re-established between the child and a third party and parties (Odike & Agu, 2003). The institution of adoption is important in society because it touches on status and therefore affect the rights and obligations of an adopted person. In Nigeria, adoption may be effected either under statutory law or under the laws of customary law. Many couples who because they had no children of their own or wanted more children in the family, were anxious to adopt children. Moreover, various missionary societies in the country collected and care for orphans and destitute children.

Child's rights law provides and protects the rights of the Nigerian child and other related matters.

1. In every action concerning a child the best interest of the child shall be the Paramount consideration.
2. A child shall be given protection and care necessary for his well-being taking into account the right and duties of the child parents or Guardian
3. Every person or institution responsible for the care or protection of children shall conform with established standards
4. The provisions of Chapter iv of 1999 constitution and any successive constitutional provision relating to fundamental rights shall apply to this law, and every child is entitled to the rights set out in this part:
 1. Every child has the right to Survival and development
 2. Every child has the right to be given a naive and every birth shall be registered
 3. Every child has the right to freedom of association and peaceful assembly in conformity with the law and in accordance with directions of the parents
 4. Every child has the right to freedom of thought, conscience and religion subject to parental direction. This right shall be a paramount consideration whenever adoption, fostering guardianship or custody is an issue.
 5. Every child is entitled to his privacy and family life. This is however subject to reasonable supervision and control by parents and Guardian over the conduct of their children and wards.



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6. Every child is entitled to freedom of movement subject to parental control, which is not harmful to the child and which is in the interest of education, safety and welfare of the child.
 7. A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community, ethnic group, sex, religion and political opinion or circumstances of his birth (Child's Right Act 2003: Abridged Version).

Administration and succession Estate of Deceased person's law or property law defines rights and obligation related to the transfer and title of personal real property.

Generally a surviving spouse can succeed to the property of a deceased spouse. However, the ability of the surviving spouse or the dependents of the deceased succeed to the property depends on the form of marriage contracted. Thus, the rule of succession differs where the spouses are married under the ACT as against where marriage was contracted under customary law. Similarly, the rule also differs where the testator die testate from where he died in intestate.

Intestate succession generally, customary law governs succession to the estate of intestate deceased persons who is subjected to customary law and who marries under it. But where is a person who is subject to customary law contract in marriage under ACT. This presumption however be rebutted by the manner of life the deceased lived while he was alive. The lifestyle of the deceased may indicate whether or not he waited customary law to apply or not.

Testate succession when a person dies living a WILL is a testamentary and revocable documents voluntarily made, executed and witnessed according to law by a testator with sound disposition mind.

A will is ambulatory (does not come into operation) until death of the maker (testator). Until the death of the testator, a will has no effect at all but operate as a mere declaration of the person's intention which may be changed from time to time. A will contains the instructions of a person recognized by law, which directs the distribution of property at his death. Once validity made, a will becomes a directive, which must be followed by a person appointed in it to administer the estate. Death knows no age. People are encouraged to tidy up their affairs and write will (Oduke & Agu, 2003).

United Nations ensures that all persons with disabilities example adults and children get the same rights irrespective of their nationality, gender, religion and language.

2. Various forms of abuses of family law awareness on families:
 - i. Tenant abuse
 - ii. A child defilement
 - iii. Forced prostitution
 - iv. broken marriages
 - v. harmful widowhood practices



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- vi. NEPA bill abuse
 - vii. domestic violence/ spousal abuse
 - viii. legitimacy
 - ix. adoption
 - x. child abuse
 - xi. child abduction
 - xii. child labour
 - xiii. divorce
 - xiv. property settlement

Lack of family law awareness give rise to various forms of abuses in families. Report abound of such problems as tenants abuse for instance, the case handled by Owodunmi in 1991, of a chartered accountant who paid the due rent yearly rent but was still asked to quit the apartment without up to six month notice (Afamefuna, 1998 & Egburu 2007).

A girl child defilement and forced prostitution (Okolie, 2009; Admau, 2009 & Adetayo, 2009). A broken marriage (Balogun, 2009). How for widowhood practices harmful widowhood practices (Anyanwu, 2003).

In Anambra state various situation exist which suggests poor level of family law awareness among individuals and families. They include forms of abuse of child rights (Ebigbo, 2003; Ejinkeonye & Anyakoha, 2007). There are also causes of harmful widowhood practices (Anyanwu, 2003). Adults and children living with disabilities face these various forms of abuses in our various families.

3. Denial of Rights of family law awareness of families with Persons living with disabilities

A. Tenancy and landlordship:

A week tenancy a week notice is given to quit

A quarterly tenancy a month notice is given

A yearly tenancy, six months notice is given

B. Forms of child right violations:

- Child abandonment
- Child labour: Farm work, child service providers in bars, hotels restaurants
- Street trading under extreme weather conditions
- sexual abuse
- Child prostitution
- Child battering
- Child trafficking
- Raping a child

Children living with disabilities that have rights to education are denied of their rights. They face abandonment, labour, sexual abuse, prostitution, battering, trafficking and rape. Adults living with disabilities are denied of their tenancy rights example a man who pays rent yearly was given a quit notice within one week to pack out. A yearly tenancy, six months notice should be given.



4. The importance of Family law Awareness on families with disabilities Advantages of marriages ACT

- It says money
- It is less stressful
- You will have legal security
- It protects you against the practice of bigamy which will be punished by 5 years of imprisonment.
- Court marriage is fast
- There is no dress code for court weddings
- It is not time consuming

Adults living with disabilities should do a will and marriage Act to get the benefits therein.

Advantages of intestate succession law

Without the presence of a valid WILL, the intestate succession law promotes spousal inheritance of property and assets it recognizes the spouse of the deceased, their biological or adopted children, surviving parents and the customary family prioritizing spouse and children.

Deceased Estate Distributed

A deceased come into existence where a person dies leaving property or a document which is a will. Such estate must then be administered and distributed in terms of the deceased's will.

Advantages of Will Making: This is one of the greatest advantages of making a will. A will helps to promote one's from the exploitation of prying eyes. It serves as a guide on how your children and loved ones can avoid several challenges on the administration of your property

1. Allows the testator to direct
2. For Protection of children's/ love ones
3. Burial directives
4. Removes every customary/family rules
5. Helps to remove rancour amongst family members
6. Help avoid statutory devolution
7. Continuity
8. The quick take over
9. Appointments of Guardians
10. Donations

A will is a written or oral Testament of how a person wants his property shared upon his/her demise. It must be voluntarily written to be valid without force or undue influence.

A testator must have capacity to make a will.



Adults living with disabilities should do a will and marriage Act to get the benefits therein.

Types of will

1. Statutory wills: it emanates from a statute
2. Mutual Wills: this is where two or more persons execute the same Will common between husband and wife
3. Joint Wills: is like mutual will but two or more person's execute the same will by giving their personal or joint properties to beneficiaries of their choice. Joint will is not irrevocable or mutual.
4. Nuncupative (Oral) Wills: it is oral will made before two or more weakness. It is not valid in most regions.
5. Holograph Wills: will make in the handwriting of the testator.
6. Simple will: provides for the outright and simple distribution of uncomplicated assets of a person.
7. Video Will: this is the type of will made by video recording. Here is to testator stating his wishes before a video camera. This type compliments a wishing will.

Implications for Persons living with disabilities

Persons living with disabilities will use the knowledge acquired from family law awareness in living harmoniously with each other in their families. They will also extend the knowledge to their illiterate parents at home. The discussion will be made available to curriculum planners to incorporate it into special education of primary, secondary and tertiary institutions. Special education teachers will use the knowledge of family law awareness to teach students in primary, secondary and tertiary levels so that they will be able to claim their rights and responsibilities.

It will make family members with persons living with disabilities to be more committed and participate fully in abiding to Law and Order in their families and society at large. This is because the survival of individuals depends on the peace and harmony in the home. It will drastically reduce child labour, abuse and neglect. Women would be aware of their matrimonial rights and as such reduce spousal abuse and harmful widowhood practices. Family law awareness programme will create harmony, love and peace in families and societies at large.

Conclusion

Many families with persons living with disabilities are not aware of the laws that should protect their rights and interests. Some of these problems can be minimized where family members, persons living with disabilities are aware of their rights and responsibilities as stipulated in family law. Ignorance of the law, however, is not an excuse for either violating the laws or suffering some forms of denial of the right provided for in the abuses.



Suggestions

1. Curriculum planners should incorporate family law awareness programme into Special Education of Nursery, Primary, Secondary and Tertiary institutions.
2. Special Education teachers will use the knowledge of family law awareness to teach children in nursery, primary, secondary and tertiary institutions.
3. Persons living with disabilities will be conversant with family law awareness and abide by it.
4. Community based social workers should know how best to protect denial of rights of adults and children with disabilities.

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