**FAMILY LAW**

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# Introduction

Family law refer to the area of legal practice focussing on issues that involve family relationships like divorce, adoption and child custody. The attorneys practicing the Family laws represents individuals seeking court proceedings of families, related negotiations and also help to draft vital legal documentations like property agreements or court petitions. The Australian Family law is helpful for families having relationship issues. The system of Family law contains various piece of common law, legislations and laws on equity that can affect the families with divorce issues, paternity problem, foster care and child custody. This study is based on the context of application of family laws and relevant legislations in the situation of a person seeking formal divorce from his legal spouse for the purpose of undergoing a second marriage in Australia.

# Case study scenario

As per the case study, Pedro Ximenez, who is a 53 year old male and born in Spain undertook an apprenticeship program and a course on Viticulture in Señorío de Nava at Bodehgas. However, while applying for a vinter position in Australia, he met Freda Khalo in a apprenticeship tour at China’s national museum. The couple had decided to marry and settle in Australia. However, the marriage they undertook did not comply with the Australian law. Therefore, in order to obtain permanent residency in Australia, the couple had to get registered in the registry office at Melbourne but could not reveal their marriage to the local community. In due course of the study, it was recognised that, Freda had previously promised to marry Diego in Mexico against her personal interest. Due to her relentless and rebellious nature, Freda had left Pedro and get settle back with Diego in Mexico. Meanwhile, Pedro fell in love with Concetta and decided to have children with her. Although, the couple wants to get married soon due to Concetta’s pregnancy, but is is not possible without divorcing Pedro’s first wife, Freda Khalo. Therefore, it seems to be clear that Pedro cannot marry Concetta legally and neither solemnise two marriages at the same time.

# Consequences of having two marriages

PedroXimenez is devastated as well as stuck with the decision of previous marriage registered under Melbourne office of registry with Freda Khalo, who had left Pedro without any formal consent [[1]](#footnote-2). However, daunted by the situation, Pedro had contacted all of the mutual friends of him and Freda, but it was not possible to find her out. However, it was not long since Pedro had fallen in love and decided to settle with Concetta in Australia. The former knows very well that the Australian Family law act of 1975 (c.48) shall not allow him to get married twice in Australia. As commented by the author [[2]](#footnote-3), the Marriage act of 1961 (c. 5) enlisted under Act of Family law, 1975 (c.48), clearly states that a person above 18 years of age can legally marry only provided with the conditions that :

* The person is able to consent legally
* The person, who wants to marry is not married previously to someone else
* If the person is not prohibited in a relationship like parent, sibling and grandparent, who is already having a proposed spouse

If a person is found violating the law, the person can be imprisoned for even seven years as stated in the Marriage act of 1961 (c.94).

In the case study of Pedro Ximenez and Freda Khalo, the former can be penalised for getting secondly married with a third person named Concetta without any formal consent with Freda Khalo. As such, if Pedro Ximenez wants to keep the first marriage and get married to Concetta, then the person is liable to get imprisoned for upto five years in Australia under Act of Crime, 1900 (c.40). This law is also applicable to Freda Khalo, who wants to get married with Diego without getting divorced from Pedro Ximenez [[3]](#footnote-4). However, one the contrary, Pedro cannot be found guilty for practicing bigamy, if the original spouse that is Freda Khalo is found missing legally or found to be dead. As per the case scenario, Pedro Ximenez has made a lot of effort to find his wife, Freda Khalo for about two months but could not trace, where exactly Freda Khalo has gone. Therefore, it can be presumed that Freda Khalo is dead or missing [[4]](#footnote-5).

At the same time, Pedro Ximenez have found a written note from Freda Khalo, telling that the wife not longer wants to stay together with Pedro and asked his husband to move on. It was also mentioned in the piece of written note that, Freda Khalo wants to return to Mexico and eventually get married to Diego to get her family love again [[5]](#footnote-6). Therefore, this is the situation where the first wife wants to get legally separated with Pedro Ximenez but since no formal procedure of divorce is not practised by the couple, it can be estimated that Pedro Ximenez cannot marry with Concetta.

Another most important fact that supports the reason is that Freda Khalo is not officially announced to be dead, therefore, the second marriage will not be legally accepted under Marriage act of 1961 (c.94) [[6]](#footnote-7). Simultaneously, Freda Khalo can also be convicted under prosecution of breachment of marriage promise with Pedro Ximenez.As such, Pedro can gain the support of Family law act, 1975 (c.48) by providing an evidence of marriage registration in Melbourne registry office to the court under Evidence amendment further act of 1869 (c.2).

# Procedure of obtaining a divorce as per the Australian court of Law

In order to get married and settled in Australia with Concetta before the baby is born, Pedro Ximenez need to obtain a divorce from Freda Khalo as per the Family law act, 1975 (c.48). At the same time, Freda Khalo can also apply for divorce in Australia for the purpose of getting married secondly with Diego before getting settled to Mexico. Influenced by the view of the author [[7]](#footnote-8), the legal procedure of filing divorce are discussed as below:

**Step 1: Applying to Federal court circuit for divorce**

In order to end previous marriage legally, it is necessary to apply to the Federal court circuit for divorce. This will need valid proof of marriage certificate held previously for documentation purpose. [[8]](#footnote-9) pinned the fact that, before applying for divorce, the couple need to be separated for 12 months and cannot get back to relationship in future. Since, the couples are applying for divorce under Australian Family law, 1975 (c.48), it is mandatory that the couples have permanent residency in Australia [[9]](#footnote-10). It is also mandatory that the couples should have been married for 2 years before applying for divorce.

**Step 2: Filing for the divorce application**

As per the case study, Pedro has been in marriage relationship with Freda for 11 years and 1 month. The couples have been living in Australia for 10 years 6 months. Therefore, the couples can apply for divorce as per Australian Family law act of 1975 (c.48). As stated by the author [[10]](#footnote-11), the application of divorce needs to be generated in two copies of the original. Along with that, the photocopy of the marriage certificate needs to be generated to the Family laws court. From a recent study, it can be stated that the divorce application can be filed electronically as per the Family law Act of 1975 (c.48). According to guidelines stated under Australia’s federal circuit court, it will require $900 to file for divorce [[11]](#footnote-12). After filing the divorce application, the court will provide a hearing date for the case. Accordingly, the court keeps two copies of the original document and give back two copies provided with a court stamp.

**Step 3: Serving the divorce application to the spouse**

After filing of the divorce application, the next step is to serve the application by post to the spouse with whom the person wants to get judicially separated. As per the view of the author [[12]](#footnote-13), the divorce from can be served in two ways that is service by post. As soon as the spouse receives the divorce form, the person needs to be confident, while signing the acknowledgement of the service form through service post. Another way of serving the divorce application from is by using the service by person method. As commented by the author [[13]](#footnote-14), the divorce application form by a person, who seeks legal separation from his previous wife can get a trusted friend or a relative aged over 18 years to serve the documents [[14]](#footnote-15). In some cases, a professional server can also be appointed to deliver the service form to the concerned person. It is to be kept in mind that the spouse needs to be served for minimum 42 days before announcement of the hearing date.

**Step 4: Filing service documents in court**

At the time of presenting the divorce form to the Federal court circuit of Australia, the person must have a valid proof that the spouse is not forced or harassed to sign the acknowledgement form. As such, Pedro must be able to prove before the court that Freda is not forced to sign the divorce application form. If done so, the court may penalise Pedro Ximenez to violate the Legislation family act of 1975 (c.53). As soon as the court is able to receive the affidavit of service and divorce application form, the Federal court makes a hearing and announces the date of case to be solicited.

**Step 5: The hearing of court**

When arriving at the Federal court, a person can see a list of cases displayed on the building court and a court officer is there for directing the person, seeking divorce to the right courtroom. Consequently, a court officer will call upon the applicants name as soon as the court is ready for the case to attend [[15]](#footnote-16). The applicant can get a professional solicitor of choice to undergo the judiciary proceedings. Thus, by visiting the court with the acknowledgment form and the divorce application, Pedro Ximenez can obtain a date and time of hearing of the case to be solicited.

**Step 6: Decision making of the court**

Under the Legislation family act of 1975 (c.53), the court can grant an applicant with divorce provided with the following conditions:

* A court can grant divorce to the applicant only when all the valid documentation in original and photocopy is submitted without any detection of ambiguity in the section of Family law act of 1975 (c.48).
* A court has the power to adjourn or postpone the case, if the court seeks better evidence on behalf of the spouse regarding whether the person was served well, while seeking divorce service form
* A court can decide the time for offering the final order of divorce. As soon as the final order of divorce is granted, the court sends a final sealed copy of the divorce order to the applicant, which offers legal right to get divorced under the Australian Family act of law, 1975 (c.48).

# Memorandum of Advice for seeking advice to Pedro Ximenez

**TO: [**The principle]

**FROM:** [Pedro Ximenez]

**DATE:** [22nd March 2019]

**FILE:** [1921121; divorce application]

**SUBJECT:** [seeking divorce from first spouse]

# Legal requirements for obtaining divorce from Freda Khalo

In order to obtain divorce from the first spouse, Pedro Ximenez is expected to follow the below mentioned legal requirements:

* Australian Family law of 1975 (c.48) that will help to resolve legal aspects of relation issues. This may also include the break down relationship. This law will help Pedro Ximenez by offering legal statements that are bound to be followed by a person, without going to the court [[16]](#footnote-17).
* Federal court circuit of Australia known as Federal court of magistrates in Australia is designed to offer jurisdiction on matters relating to family law or legislation of family W act,1975 (c.53), administration law and child support. However, as per the view of the author [[17]](#footnote-18), 90% of the workload of Federal court is in the areas of family law. Therefore, Pedro can seek legal separation from Freda Khalo positively from the Australian federal circuit court.
* The marriage act of 1961 (c.94), will be necessary for complying with the Australia’s legislation family W act of 1975 (c.53), which applies to every territory and state of Australia. The marriage act of 1961 (c.94) is covered under Commonwealth constitution (c.51), which offers guidelines to matters such as divorce, matrimonial causes and marriages. Under this law, Pedro Ximenez can seek legal separation in the form of divorce from Freda Khalo after having formal consent in the form of service application form send by post, close relatives or a professional solicitor [[18]](#footnote-19).
* Family law registry, which is a public area near the federal court from where a person seeking divorce can obtain necessary information regarding the court law process and hearings. In addition, from the family law registry office, Pedro Ximenez will be able to know about the professional parties filing the applications related to the cases.

# Procedure required for Pedro to obtain the desired results

Following are the useful guidelines for the documentation process of Divorce application in Australian federal court:

**1st step: Apply for the divorce application**

Pedro Ximenez can apply for divorce application directly from the online portal of commonwealth court (www.comcourts.gov.au). As commented by the author [[19]](#footnote-20), the e-application form need to be completed with appropriate information mentioned in the marriage certificate. The application form is then send to nearby post for delivery to the spouse.

**2nd step: Filing the divorce application**

Prior to filing the divorce application form, it is important that the applicant qualifies as an authorised person with a genuine reason for filing the divorce form. Since, the marriage took place in Melbourne registry office, Pedro Ximenez can present the marriage registration certificate that clarifies the date of marriage and the couples being a permanent resident of Australia. Accordingly, Pedro can file for divorce at the online portal (www.federalcircuitcourt.gov.au). As per the view of the author [[20]](#footnote-21), Part G, application affidavit can be authorized to produce witness under the signature of notary public or diplomatic officer of Australia to support Pedro Ximenez for filing the divorce application form. For witness, Pedro can also keep a photocopy of the signed and completed application divorce form.

**3rd step: Serving the divorce application to the spouse**

In order to apply for the divorce together, Pedro (sole applicant) and Freda (respondant) need to keep an original copy of the sealed and completed divorce form. The applied divorce form needs to be served within 28 days if the respondant is residing in Australia. However, in this case, since Freda Khalo is residing in Mexico presently, therefore, a serving period of 42 days will be necessary. This will require a formal consent after complying to which the respondent will put the signature on the application form.

**4th step: Filing service documents in court**

This will require an affidavit of service and an acknowledgement service form signed by Freda to provide her formal consent of the divorce to the court. Both the affidavit of service form and acknowledgement form needs to be delivered to the applicant and the court within 42 days [[21]](#footnote-22). Filing of service documents will provide useful evidence to the court on the basis of which the Australian federal circuit court will announce a date for hearing of the divorce case of Pedro and Freda.

**5th step: Hearing date**

Pedro Ximenez can attend the court hearing after receiving the acknowledgement and service form from Freda Khalo. On the basis of court’s announcement, Pedro and Freda need to attend the Australian federal circuit court as mentioned in Australian family law of 1975 (c.48). This will include a formal discussion with the professional solicitor in presence of a recognised judge. On the grounds of the Family law act and legislations family W act, 1975 (c.53), the court will offer a meaningful decision regarding the couples seeking judicial separation [[22]](#footnote-23).

**6th step: Decision making of the court**

The court makes a decision under complete supervision and jurisdiction policy. The authorised person taking the decision is not abided by any possessions or unlawful act. Under the Commonwealth constitution (c.51), the court can grant divorce to the married couples after receiving complete application form from Pedro Ximenez and acknowledgement form Freda Khalo without any further abysmal regarding dismissal or refusal of the application form [[23]](#footnote-24).

After completing the documentation process, Pedro Ximenez can obtain a divorce from Freda Khalo permanently. This will take hardly 2 months, as per the Australian family law, 1975 (c.48) as both of the applicant and respondent no longer want to stay together. Consequently, Pedro Ximenez can apply for getting married with Concetta under the Australian marriage act of 1961 (c.94). Thus, by June 2019, Concetta and Pedro can legally get married and have a baby thereafter.

# Conclusion

Australian family law have been considered as very effective in regulating marriage breakdown and controlling the patterns of divorce and marriages. Since, the number of illegal marriages have increased, the Family law of 1975 (c.48) has been useful for regulating the abysmal and unnecessary breakdowns in family. In addition to marriage breakdown, the law also provides essential jurisdiction over applicants filing unlawful divorce applications. The law provides essential constriction over Australian residents breaching the marriage promise. Freda Khalo, who wants to get married with Diego without filing any divorce can be convicted under Evidence further amendment act of 1869 (c.2). However, on the other hand, Pedro Ximenez, who has recently fell in love with Concetta cannot marry her without receiving any formal consent from Freda regarding divorce. In such case, the Commonwealth constitution (c.51), comprising of the Australian legislation family W act, 1975 (c.53) and family law of 1975 (c.48) can be helpful in receiving divorce from the Freda Khalo. At the same time, the Australian Federal circuit court can provide useful guidelines to obtain divorce from Freda Khalo. Accordingly, by completing all the necessary documentation under the Family law of 1975 (c.48) from both ends, Pedro Ximenez can get legally separated from Freda Khalo.Consequently, after 2 months, Pedro can get legally married to Concetta and settle in Australia.

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