## III. MARRIAGE

Marriage, as understood in the Soviet Union, is the "voluntary marital union of man and woman."[13] When one compares this to the classic definition of marriage enunciated by Lord Penzance in *Hyde* v. *Hyde*[13] that "marriage, as understood in Christendom . . . [is the] voluntary union of one man and one woman for life, to the exclusion of all others," it can be seen that the only essential difference is one of form only. The additional words "for life" in Lord Penzance's definition are indicative of the ecclesiastical origin of marriage in the common law world. The reason for this difference is in all probability historical, in that post-Czarist Russia was familiar with the concept of civil divorce. Hence, Lenin and Marx did not perceive marriage as being indissoluble. It is interesting to speculate on why the fundamentals of the various Soviet Republican codes stipulate that in all instances a marriage must be monogamous in nature.[15] After all, Moslems comprise a substantial ethnic minority in the Soviet Union. Yet we see that Moslems have been expressly prosecuted and convicted for the criminal offence of bigamy even though polygamy is not proscribed by their religion.[16] Did the early Bolsheviks pay only lip service to the widely circulated dogma that the institution of monogamous marriage as practised in the Western world was essentially bourgeois and reactionary? Or did they give credence to the widely accepted doctrine of western sociologists that monogamous marriage was, in the final analysis, the optimum vehicle for the encouragement and proliferation of the family unit as the essential building block of society?

In Professor Luryi's opinion, monogamous marriage is a remnant of religious tradition. At the same time monogamous marriages reflect the concept of true equality of the spouses, a manifestation of the equal rights enjoyed by each of them. A voluntary union based on "love" can apply to one man and one woman only. This is a very romantic concept. If the doctrine of equality between spouses were logically extended, then in the light of equal rights both spouses woud have a right to second spouses. However, this is morally unpalatable to Socialist ideals, and therefore monogamy is rigidly prescribed.

The penalties for non-adherence to the prescribed legislative code concerning the formal prerequisites for entering into a valid marriage is the first indication in Professor Luryi's treatise of politicization of the Soviet legal system.[17] Official and unofficial state policy also manifests itself in the Soviet government's obvious efforts to discourage marriages between Soviet nationals and foreigners.[18]

13. *Id.*, at n. 28.
14. (1866) L.R. 1 P. & D. 130, at 133.
15. Luryi text, *Supra* n. 41-42.
16. *Ibid.*
17. *Id.*, at n. 55-59.
18. *Id.*, at n. 37-38.

In the U.S.S.R., as elsewhere, unpalatable social conditions can lead to ingenious devices for subverting the law. Professor Luryi discusses the "fictitious marriage" as a prime example of this.[19] One can only wryly observe that our system is not without similar ploys. However, a certain segment of our society strives to achieve not the "fictitious marriage," but the "fictitious divorce." This arises in North American society when a person desires to take advantage of social assistance or public welfare allowances, and endeavours to conceal from the appropriate governmental authority the fact that he or she is either married or engaged in a Common Law union. If the true facts were known, the inevitable result would be diminution or complete curtailment of the welfare allowance.

## IV. SPOUSAL RIGHTS AND OBLIGATIONS

The U.S.S.R. has always considered itself a champion of women's rights. The equality of women is a cornerstone of the Soviet constitution. This, at least, is the pristine theory. The reality, unfortunately, can sometimes prove to be markedly different.[20]

The Common Law has always lagged far behind in the clarification of women's rights. To a great extent this is due, once again, to the ecclesiastical origins of our family law. Biblically, a woman "cleaved" unto her husband. When this concept was transmuted into legal terms, the woman was considered, from the strict legal point of view, to be merely an appendage of her spouse. It was not until the end of the 19th century that the first married woman's property legislation was enacted in England, thus freeing women from many of the legal fetters that had restrained them.[21] Old attitudes die hard, and no broad legislative attempt was made to grant females some modicum of equality in the matrimonial law sphere in Canada until new divorce legislation[22] was passed in 1968. Equal privileges, of course, also implied equal obligations.[23]

It is interesting to note that in Canada, unlike in Russia, there is no legislation controlling the usage of surnames. At Common Law, a female has never been under any constraints as regards the usage of any surname of her choice, provided that there is no attempt to deceive or mislead. However, social custom, at least until the emergence of the Women's Movement, usually compelled the usage of a husband's surname by a married woman. The recent upsurge of in the feminist emancipation movement in the Western world has resulted in a much more varied practice relating to the utilization of a family surname by married women. As Professor Luryi points out[24] the use of a family surname is of no small import in the U.S.S.R. It goes beyond mere symbolism, and is a *legal* manifestation of the fact that Marx and Lenin, in theory at least, wished to establish

19. *Id.*, at n. 77-84.

20. *Id.*, at n. 86.

21. *Married Woman's Property Act*, 1870, 33 & 34 Vict., c. 93 (U.K.).

22. *Divorce Act*, R.S.C. 1970, c. D-8.

23. *Divorce Act*, R.S.C. 1970, c. D-8, s. 11(1)(b), where in divorce actions, for the first time in Canadian legislative history, an obligation was imposed on females to support their husbands.

24. Luryi text, *Supra* n. 93-120.