

14 Rather than dismiss the application, and because the defendants, although not agreeing, are not opposing at the same time, I will make the order prayed but I will post-date it for one week. I take this course of action to give more time to the parties and avoid the need for the plaintiffs, if it arises, to make a new application in the future. But unless there are very strong reasons, an application for appraisal and sale should not be so expeditiously made after arrest.

*Order accordingly.*

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[1980–87 Gib LR 332]

IN THE MATTER OF X

SUPREME COURT (Davis, C.J.): December 2nd, 1985

*Family Law—marriage—age of marriage—by Marriage Ordinance (cap. 99), s.14(1A), Supreme Court may permit marriage of girl under 16 if “exceptional circumstances”—unmarried pregnancy at age of 15 sufficiently “exceptional” in Gibraltar to allow court to grant permission—court to be satisfied no pressure to marry imposed on couple, circumstances conducive to marriage and family support available*

A 15-year-old girl applied to the Supreme Court for permission to marry.

The applicant sought permission to marry her fiancé under s.14(1A) of the Marriage Ordinance (*cap.* 99).

She submitted that she should be allowed to marry at the age of 15 as (a) she was pregnant and expected her baby to be born before her 16th birthday; (b) neither she nor her fiancé had been subjected to pressure to get married by either her own or his family; (c) her fiancé was 19 and earned his own living; and (d) their families would support them in their marriage.

**Held**, granting the application:

The applicant and her fiancé would be allowed to marry, as unmarried pregnancy under the age of 16 was sufficiently “exceptional,” within the meaning of s.14(1A) of the Marriage Ordinance (*cap.* 99), to justify allowing them to do so. The court was satisfied that they had chosen to marry of their own free will without being subject to any external pressure and it appeared that the circumstances of the applicant, her fiancé and their respective families were conducive to the marriage. This was

evidenced by affidavits from the fathers of the applicant and her fiancé, a report from the family care officer and a letter from the families' parish priest. Further, both families had room to accommodate the couple and they had agreed to live with the applicant's parents at the outset of their marriage (paras. 5–8).

**Case cited:**

(1) *Fay v. Fay*, [1982] A.C. 835; [1982] 3 W.L.R. 206; [1982] 2 All E.R. 922, *dicta* of Lord Scarman applied.

**Legislation construed:**

Marriage Ordinance (Laws of Gibraltar, *cap.* 99), s.14: The relevant terms of this section are set out at para. 2.

A. *Lombard* for the applicant;  
J. *Núñez*, *Crown Counsel*, for the Crown.

1 **DAVIS, C.J.:** The applicant, a girl of 15, applies to the court, by her father and next friend, for permission to marry under s.14(1A) of the Marriage Ordinance (*cap.* 99), on the grounds that she is pregnant and that it is expected that her baby will be born before she attains her 16th birthday.

2 Section 14 provides, insofar as relevant, as follows:

“(1) Subject to subsections (1A) and (1B), a marriage between persons of whom either is under the age of 16 years shall be void.

(1A) The Supreme Court, on application by her or on her behalf, may in exceptional circumstances permit a female person who has attained the age of 15 years but has not attained the age of 16 years, to enter into a marriage, and where she enters into that marriage pursuant to that permission, the marriage shall not by virtue of subsection (1) be void.”

3 Section 14 of the Marriage Ordinance (*cap.* 99) was amended by s.18 of the Matrimonial Causes (Amendment) Ordinance 1983, which came into effect on January 1st, 1984. Prior to that, s.14(1) provided that “marriage between persons of whom either the female party is under the age of fourteen or the male party is under the age of sixteen shall be void.”

4 It would appear from this that the aim of the legislature was to raise the lawful age of marriage for a girl from 14 to 16, while at the same time making provision for marriage at 15 “in exceptional circumstances” on application to the court. The Ordinance, as amended, gives no indication as to what the legislature envisaged as “exceptional circumstances.” “Exceptional” in the *Shorter Oxford Dictionary* (1980) is defined as “of the nature of or forming an exception; unusual.” In *Words and Phrases*

*Legally Defined*, 2nd ed., at 16 (1984 Cum. Supp.), referring to the use of the word “exceptional” in s.3(2) of the English Matrimonial Causes Act 1973 (which corresponds to s.12(2) of the Matrimonial Causes Ordinance (*cap.* 101)), the learned authors cited a passage from the case of *Fay v. Fay* (1) in which Lord Scarman said ([1982] A.C. at 842):

“It is not possible to define with any precision what is meant by ‘exceptional’ hardship or depravity. The imprecision of these concepts with the resultant impossibility of definition must have been deliberately accepted as appropriate by the legislature and is itself an indication that the determination of what is exceptional is essentially a matter for the judge.”

5 In my view, the same applies in the determination of the expression “exceptional circumstances” in s.14(1A) of the Marriage Ordinance. And the conclusion I have come to is that, in Gibraltar, pregnancy in an unmarried girl under the age of 16 is unusual and therefore exceptional. The power given to the Supreme Court by s.14(1A) to give its permission to the marriage of a girl over 15, but under 16, in exceptional circumstances is, however, a discretionary power, and in my view such permission should not be granted unless the court is satisfied, as far as possible, that the parties to the proposed marriage have not been subjected to pressure to get married by their respective parents, families or anyone else; that the parties themselves genuinely wish to marry and that the parties’ own circumstances and their family circumstances are generally conducive to the marriage taking place.

6 In this case, I am quite satisfied, from the report of the family care officer, from the affidavits sworn by the applicant’s father and the father of the applicant’s fiancé and from the letter addressed to me by the parish priest concerned in this matter, that the matter has been dealt with extremely sensibly by all concerned. It does not appear to me that the applicant and her fiancé have been subjected to family pressure to get married, and I am satisfied that they wish to marry of their own free will.

7 The young man concerned in this case is 19 and earns his own living. The applicant left school earlier this year and has been working for the last few months. The parents of both parties to the proposed marriage approve of the marriage and will, I have no doubt, give it their encouragement and support. Both have well-ordered homes with sufficient room to accommodate the applicant and her fiancé should they wish to make use of it in the event of their marriage, and it seems that the applicant and her fiancé have accepted her parents’ offer to accommodate them at the outset of their marriage.

8 In these circumstances, there appears to be no reason to withhold the court's permission to the applicant to marry under the age of 16 and this is accordingly granted.

*Application granted.*

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[1980–87 Gib LR 335]

**ALBA v. ATTORNEY-GENERAL**

SUPREME COURT (Alcantara, A.J.): December 2nd, 1985

*Gambling—lotteries—lost or destroyed ticket—confiscated ticket—conditions of Lotteries Regulations (cap. 64), regs. 10 and 10A not complied with and no payment of prize money if winning ticket not presented because confiscated by Customs authorities and purchaser fails to make statutory declaration of loss of ticket prior to draw*

*Gambling—lotteries—lost or destroyed ticket—confiscated ticket—refusal to pay out on winning lottery ticket confiscated by Spanish Customs not indirect enforcement of Spanish penal or revenue law prohibiting importation of foreign lottery tickets*

The plaintiff brought proceedings against the Attorney-General to recover lottery prize money for which her ticket had been confiscated by Spanish Customs authorities.

The plaintiff resided in Spain but whilst in Gibraltar purchased a ticket for the Gibraltar Government Lottery which was confiscated on her return to Spain by Spanish Customs authorities acting in accordance with Spanish law. When the lottery was drawn, it transpired that the confiscated ticket was the winning ticket, but it was not until a week after the draw that the plaintiff reported the confiscation to the Treasury in Gibraltar and lodged a formal claim to the prize money supported by a statutory declaration. The Accountant-General of Gibraltar refused to pay the prize money to her and also refused a claim from a representative of a Spanish bank, presumably acting on behalf of the Spanish Government. The plaintiff then brought proceedings against the Attorney-General for the prize money and the Attorney-General issued an interpleader summons, naming the additional claimants to the prize money as Banco Exterior de España and the head of the Customs section at La Linea. The claimants were served with notice of the proceedings but failed to appear and, as a