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**Marriages and Conflict of Laws**

1. Explain the term "limping marriage". Identify the ways, at common law, by which the incidence of limping marriage has been reduced.

**Limping marriage**

Limping marriages refer to the marital status of people considered as married under the law of one state or country while under the law of another state such marriage is unrecognized, considered inexistent and not binding. According to **Britannica encyclopaedia**, limping marriage is “when a person is regarded as married by one country and as single by another”. The term “limping marriage” was defined by the High Court in ***Pires v. Pires[[1]](#footnote-1)*** as “situations where a couple was considered married in one country and divorced in another”. Also, **Lord Penzance** in ***Wilson v Wilson***, viewed limping marriage as “scandal when a man and woman are man and wife in one country and strangers in another”.

The root cause of limping marriages is the existence of different rules of Private International Law that regulate recognition of foreign judgements in different states. This fundamental difference connotes that a country in which the nullity decree was given will view a marriage as totally extinguished whereas, another country which the parties to the suit is seeking recognition of the foreign nullity decree still views the parties as married thus, lacking capacity to contract another marriage. This has wrought a lot of uncertainty and injustice as seen in plethora of cases:***Padolechia v. Padolechia***[[2]](#footnote-2), ***R v. Brentwood Superintendent Registrar of Marriages ex p Arais***[[3]](#footnote-3)**, *Lawrence v. Lawrence*[[4]](#footnote-4)*, Biggar v. Biggar [[5]](#footnote-5)***and ***Kendall v. Kendall***[[6]](#footnote-6)***.***

**Ways Common Law has reduced incidence of limping marriages:**

1. Rule in ***Travers v. Holley***[[7]](#footnote-7)

This states that the English court will recognise a foreign decree of divorce if it is granted in circumstances where, *mutatis mutandis*, an English court would itself have exercised jurisdiction. This rule alone widened the scope of recognition of foreign decrees of nullity, hence, reducing incidences of limping marriage. The rule goes to state that the court will recognise a foreign decree if the court assumed jurisdiction in instances the English court would have also assumed the same jurisdiction. This position is re-enacted in **Section 81(3) of Matrimonial Causes Act[[8]](#footnote-8)** which provides for special circumstances whereby foreign decrees will be recognised in favour of deserted wives.

1. The real and substantial connection rule as distilled from ***Indyka v. Indyka***[[9]](#footnote-9)

This states that a foreign decree should be recognised in England if there was a real and substantial connection between either the petitioner or the respondent and the foreign country in which the divorce was obtained. This rule was applied in subsequent cases such as that of ***Blair v. Blair***[[10]](#footnote-10).

1. Explain succinctly, Mutation or Conversion of Marriage in Conflict of Laws.

This is put simply, change in the nature of a marriage. This change may occur as a result of change of domicile or religious affiliations by the parties or by acts independent of their control such as operation of law (i.e., enactment of new legislation). The former position as held in ***Hyde v. Hyde[[11]](#footnote-11)*** was that the nature of marriage was fixed irrevocably at the time of its inception. Subsequently, it was held that a marriage that is potentially polygamous at its inception may become monogamous as seen ***Cheni v. Cheni[[12]](#footnote-12)***. The case, is different for a marriage which is monogamous at inception. Even though the husband goes through a valid polygamous ceremony of marriage, the status of the former monogamous marriage does not change as seen in the decision of the Privy Council in ***AG of Ceylon v. Read***[[13]](#footnote-13).

Acts that may lead to conversion of marriage include:

1. Change of domicile
2. Change of religious affiliations[[14]](#footnote-14)
3. Change in law of the country[[15]](#footnote-15)
1. AIR 1967, Goa, Daman and Diu, 113. [↑](#footnote-ref-1)
2. (1968) P 314. [↑](#footnote-ref-2)
3. (1968) 2 QB 956. [↑](#footnote-ref-3)
4. (1985) Fam 106. [↑](#footnote-ref-4)
5. (1930) 2 D.L.R. 940. [↑](#footnote-ref-5)
6. (1977) Fam 208. [↑](#footnote-ref-6)
7. (1953) P 246. [↑](#footnote-ref-7)
8. CAP. M7 Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-8)
9. (1969) 1 AC 33. [↑](#footnote-ref-9)
10. (1969) 1 WLR 221. [↑](#footnote-ref-10)
11. (1866) LR 1 P & 130. [↑](#footnote-ref-11)
12. (1965) P 85 (Simon P). [↑](#footnote-ref-12)
13. (1965) AC 720; 1 All ER 812. [↑](#footnote-ref-13)
14. AG of Ceylon v. Read (supra) [↑](#footnote-ref-14)
15. As seen in Parkasho v. Singh where a potentially polygamous marriage was made monogamous by the Hindu Marriage Act 1955. [↑](#footnote-ref-15)