**NAME: FOLARINDE FAITH TEMITOPE**

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**COURSE TITLE: CONFLICT OF LAWS II**

**ASSIGNMENT TITLE: MARRIAGES AND CONFLICT OF LAWS**

**QUESTION**

1. Explain the term ‘limping marriage’. Identify the ways, at common law, by which the incidence of limping marriage have been reduced.
2. Explain succinctly, mutation or conversion of marriage in conflict of laws.

**INTRODUCTION**

The term **“Marriage”** is not subject to a particular meaning that is, it doesn’t have a standard definition.

According to the case of ***Hyde v Hyde***[[1]](#footnote-1), the Monogamous nature of marriage was defined as the voluntary union for life of one man and one woman to the exclusion of all others. However this definition has been criticised as some are of the view that a marriage for life can hardly stand in this modern day as marriages are contracted on short-term basis.

Nevertheless, the Polygamous nature of marriage is defined as a voluntary union for life of one man with one or several wives. The essential characteristics of this form of marriage is the capacity of the man to take as many wives as he pleases.

1. **LIMPING MARRIAGES**

**Definition of Limping Marriages**

Limping marriages are that situation whereby in one jurisdiction the parties are validly married and in another jurisdiction, the marriage of the parties are not recognized. This is closely related to capacity to marry as where in a forum, a foreign decree has been recognized that the parties are not married then it will allow such parties to have capacity to remarry. However where the foreign decree was not recognized by the forum court, the parties will lack the capacity to remarry has they will be deemed married under the law of the forum.

Also, it is defined as a situation where a court does not recognise the decree of annulment or dissolution, whereas it is recognised in the foreign country where it was granted.

Also, it was defined in the case of ***Wilson v Wilson***[[2]](#footnote-2) that it is a phenomenon which is described as "the scandal which arises when a man and a woman are held to be a man and wife in one country and strangers in another.

In the case of ***Padolecchia v Padolecchia***[[3]](#footnote-3), where the husband was domiciled in Italy and got married there. Later, he obtained a divorce in Mexico in which the decree was not recognized in Italy. He remarried in England and later sought for nullify of the marriage on the ground that he was still married to his first wife. The court held that he lacked the capacity to marry the second wife has his marriage to his first wife was still subsisting under the Italian law.

**LIMPING MARRIAGE UNDER COMMON LAW**

Under Common Law, the House of Lords have brought a solution in order to curb or reduce the incidence of limping marriages. This was situated in the case of Indyka v Indyka[[4]](#footnote-4), where the House of Lords came up with the test of **"Real and Substantial connection".** That is for a foreign decree on marriage to be recognised, the parties must show a real and substantial connection with the foreign country in question.

2. **MUTATION OF MARRIAGE**

A polygamous marriage is a situation where a man is allowed to have more than one wife as he pleases while; monogamous is where a man is allowed to marry only one wife with the exclusion of all others. It is important to note that whether a union is polygamous in nature is determined by the law of the place where the marriage was celebrated this was stated in the case of ***Srini Vasan v Srini Vasan***[[5]](#footnote-5). Mutation is a concept in marriage and it occurs where the character of a marriage may be changed from polygamous nature of marriage **(customary** **marriage),** to a monogamous nature **(statutory marriage).**

As a general rule, the English court will not grant matrimonial relief to potentially polygamous unions. In the case of ***Hyde v Hyde***[[6]](#footnote-6), ***Lord Penzance*** stated that “all parties to a polygamous or a potentially polygamous marriage are precluded from seeking matrimonial relief from common law courts". Also, in the case of ***Lim v Lim[[7]](#footnote-7),*** it was held the party to a polygamous marriage can't and will be precluded from seeking matrimonial relief.

Also as seen in the case of ***Sowa v Sowa***[[8]](#footnote-8) where it was stated that;

***“If the ceremony is polygamous then it does not come within the word marriage for the purpose of the Act relating to matrimonial matters, nor do the parties to it come within the words 'wife' or 'husband'”***. Also has explained in the case of ***Parkasho v Singh[[9]](#footnote-9)***

However, there are instances where the character of a marriage may change from polygamous to monogamous and this is known as "mutation or conversion of marriage". The mutation of a polygamous marriage to a monogamous marriage is usually by change of domicile of the parties and where this occurs, a party will be granted matrimonial relief.

In the case of ***Sara v Sara***[[10]](#footnote-10) the court held that a potentially polygamous marriage contracted in India had been converted into a monogamous union because the parties had acquired a new domicile of choice in British Columbia and such mutation was considered sufficient to attract the matrimonial relief available under the English common law. Also as seen in the case of ***Re*** ***Hassan v Hassan***[[11]](#footnote-11)

Furthermore, in the case of ***Ali v Ali***[[12]](#footnote-12), it was held that a potentially polygamous marriage may be converted into a monogamous marriage if the parties acquire an English domicile.

Also, according to ***Dicey and Morris***[[13]](#footnote-13) they were of the opinion that;

***“A potentially polygamous marriage may become a monogamous union by reason of a change of domicile, religion, or of the law before the happening of the events which give rise to the proceedings”***

In the ***Sinha Peerage's*** case, it was held that notwithstanding that a marriage may be potentially polygamous from the inception, it can be subsequently converted or mutated into a monogamous marriage for the purpose of attracting the matrimonial relief available under the English common law.

However, it's important to note that once a potentially polygamous marriage has been converted into a monogamous union either by way of the change of religion, domicile, and the barrier which is the definition of marriage raised in the case of ***Hyde v Hyde***[[14]](#footnote-14) can no longer exist and the court will have the jurisdiction to decree the matrimonial relief sought.

**CONCLUSION**

Conclusively, under the common law, a party from a polygamous marriage cannot be granted matrimonial relief this is because the only form of marriage recognised under common law is that of Christendom that is; only between one man and one woman to the exclusion of all others[[15]](#footnote-15)and any other marriage would not be acceptable and recognized.

However, the Common Law acceptance of the principle of mutation is one major step towards reconciling foreign law and culture with the established traditions of English private international law and the Western Judaic-Christian institution of monogamous marriage. While the principle of mutation cannot assist the parties to an *actually* polygamous marriage, countries like **England, Australia, and New Zealand** have recently enacted the provisions of the ***Matrimonial Proceedings (Polygamous Marriages)* *Act[[16]](#footnote-16)***to give their respective courts, under certain conditions jurisdiction to grant matrimonial relief, notwithstanding that a marriage might be potentially polygamous. Thus, courts in the above jurisdiction can now grant matrimonial relief without having to rely on the nebulous or rigid rule of conversion.

REFRENCES

* Polygamous Marriage and the Principle of Mutation in the Conflict of Laws (MI Marasinghe)
* Matrimonial Causes; Private International Laws: Nigerian Perspective

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2. (1872) L.R.P&D 435 @ 442 [↑](#footnote-ref-2)
3. (1968) P.314 [↑](#footnote-ref-3)
4. (1969) 1 A.C. 53 [↑](#footnote-ref-4)
5. (1946) P. 67. [↑](#footnote-ref-5)
6. Supra [↑](#footnote-ref-6)
7. (1948) 2 D.L.R. 353 [↑](#footnote-ref-7)
8. (1961) P. 70(C.A), [↑](#footnote-ref-8)
9. (1967) 2 W.L.R. 946. [↑](#footnote-ref-9)
10. (1962) 31 D.L.R (2d) 566 (B.C.S.C), [↑](#footnote-ref-10)
11. (1976) 12 O.R (2d) 432 (H.C.) [↑](#footnote-ref-11)
12. (1966) 1 All E.R. 664, [↑](#footnote-ref-12)
13. conflict of laws 9th ed. (1973), 283 [↑](#footnote-ref-13)
14. Supra [↑](#footnote-ref-14)
15. Hyde v Hyde [↑](#footnote-ref-15)
16. 1972, c.38 s.1 (1), as am. By the Matrimonial Causes Act 1973, 1973, c18, s47(U.K) [↑](#footnote-ref-16)