**NAME**: Akpaniteaku Favour Chidalu

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**COURSE**: Conflict of Laws II [LPI 406]

**QUESTION**

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

2. Explain succinctly, mutation or conversion of marriage in conflict of laws.

**ATTEMPT 1**

**LIMPING MARRIAGES**

Limping marriage is an unfortunate result of the law of conflict of laws.[[1]](#footnote-2) This is a marriage validly concluded in one jurisdiction while invalid in another jurisdiction. This concept occurs in situations where a foreign judgement is given on the dissolution of marriage and such judgement is recognized in one jurisdiction while not recognized in another. Limping marraige is a situation where the Nigerian court does not recognise the decree of annulment or dissolution, whereas it is recognised in the foreign country where it is granted. In order words, it is possible for a decree of nullity or dissolution to be granted in country X and yet not recognised in Nigeria as valid. The situation created by such failure to recognise the decree granted by the courts of other countries is what is referred to as ‘limping marriages’, this is because in one country [where the decree was granted] the couple is no longer married but in another country whose courts do not recognise the foreign decree of dissolution, the couple is still married and any attempt for any of the parties to contract another marriage in that country would be invalid, the marriage would be void. This phenomenon has been described as ‘the scandal which arises when a man and a woman are held to be husband and wife in one country and strangers in another’.

In order to avoid this problem, the House of Lords, in the case of *Indyka v Indyka,*[[2]](#footnote-3)came up with the test of real and substantial connection. Thus, for a foreign decree to be recognized, the parties were only required to show a ‘real and substantial connection’ with the foreign country in question and the strict rules on domicile were relaxed.

**ATTEMPT 2**

**MUTATION AND CONVERSION OF MARRIAGE IN CONFLICT OF LAWS**

Polygamy is considered primarily a legal concept, giving rise to a particular legal status, but in fact polygamy symbolizes a particular cultural and religious heritage.[[3]](#footnote-4) African native law and custom espouse polygamy, both as a religious fact and as a cultural facet of African tribal life.[[4]](#footnote-5) However, courts have consistently held that parties to a polygamous or a potentially polygamous union cannot seek matrimonial relief from the common law. Lord Penzance wrote in *Hyde v Hyde*:

‘I conceive that marriage as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others’.

Now it is obvious that the matrimonial law of England is adapted to the Christian marriage, and it is wholly inapplicable to polygamy. We have in England no law framed on the scale of polygamy, or adjusted to its requirements. However, commencing with an option tendered by Lord Maugham to the Committee of Privileges in the *Sinha Peerage* case,[[5]](#footnote-6) decisions developed around the principles that notwithstanding the fact that a marriage may be potentially polygamous at its inception, it could subsequently become converted or mutated into a monogamous marriage for the purpose of attracting the matrimonial relief available under the English common law. The facts of the *Sinha Peerage* case are as follows. On May 15, 1880, Baron Sinha of Raipur married GobindaMohini in India, under Hindu law. The marriage was potentionally polygamous since the Baron could lawfully marry additional wives[[6]](#footnote-7) during the subsistence of his marriage to GobindaMohini. However, it was established as a fact that this did not take place. In 1886 the Baron and his wife embraced a particular sect of the Hindu faith called BrahmoSamaj. Devotees of the sect had taken a religious vow to follow monogamy. The petitioner; Aroon Kumar Sinha, was born in 1887 to GobindaMohini and the Baron. By 1919 the Baron had received his knighthood and was then the Under-Secretary of State for India at Whitehall. Baron Sinha died on March 5th, 1928. Aroon Kumar Sinha thereafter petitioned the Committee for Privileges of the Privy Council that a writ of summons to Parliament be issued to him as the second Baron Sinha of Raipur. The Committee was called upon to determine whether Aroon Kumar Sinha was the lawfully begotten heir of the first Baron Sinha. Lord Maugham L.C. ruled that Aroon Kumar Sinha was such an heir, relying on the 1886 conversion of his parents’ marriage into monogamy.

 There is judicial authority to support the view that the acquisition of a new domicile and thereby a new personal law which exclusively recognizes monogamy, is one of the means available for conversion; a change of one’s personal law changes the character of one’s matrimonial status from polygamous to monogamous. In *Qureshi v Qureshi,[[7]](#footnote-8)*while Sir Jocelyn Simon admitted that jurisdiction could be established on the ground that “… both parties were domiciled in England at the time of the petition”, he preferred to his decision on other reasoning. The mere fact that the potentially polygamous marriage was celebrated in an exclusively monogamous jurisdiction could have been considered sufficient grounds to make the necessary conversion. See *Cheni v Cheni.[[8]](#footnote-9)*

The birth of offspring was sufficient to make the marriage monogamous. Diceystated that matrimonial relief in these cases of conversion is restricted to instances where the marriage has remained merely potentially polygamous and has not actually become polygamous. In the latter instance, Dicey believed that the parties might be required to delay their petitions to court until the number of polygamous wives was reduced to one, by death or extra-judicial divorce of the others. In that sense there is a practical limitation placed upon the application of this principle. In any event, this appears to be the only effective inroad which the common law courts have made on the rigorous rule in *Hyde v Hyde*.

REFERENCE

1.https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.jstor.org/stable/1094251&ved=2ahUKEwiOtp2ozpfpAhWJ4IUKHQwLDPEQFjAJegQIAxAB&usg=AOvVaw3XaWH1luh8ibyOyN86Svhq-visited 3rd of May 2020

1. https://www.jstor.org> stable [↑](#footnote-ref-2)
2. (1969) 1 A.C. 53. [↑](#footnote-ref-3)
3. Mayne,*Treatise on Hindu Law and Usages,* 11th ed. (1953), 172-73. [↑](#footnote-ref-4)
4. Farran, *Matrimonial Laws of the Sudan* (1963); chs.1 and 3. [↑](#footnote-ref-5)
5. Reported as an appendix to *Baindail v Baindail*[1946] 1 All E.R. 342, 348. The Official Law Reports of this case in the Queen’s Bench series do not carry a report of the *Sinha Peerage* decision. [↑](#footnote-ref-6)
6. Hindu Law, unlike the Muhammadan Law, does not limit the number of wives one may marry. [↑](#footnote-ref-7)
7. (1972) Fam. 173. [↑](#footnote-ref-8)
8. (1965) P. 85 (H.C.). [↑](#footnote-ref-9)