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Assignment Title: Marriages and Conflict of Laws

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Questions

1. Explain the term "limping marriage". Identify the ways, at common law, by which the incidence of limping marriage have been reduced.
2. Explain succintly, Mutation or Conversion of Marriage in Conflict of Laws.

QUESTION 1

Limping marriages refers 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. The situation created by such failure to recognize the decree granted by the courts of other countries is what is reffered 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 recognize 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 and void.

In Padolechia v Padolechia, the husband was domiciled in and married in Italy in 1943 but subsequently obtained a divorce in Mexico and contracted another marriage in England. In a petition to annul the marriage on the ground that the first marriage was valid and subsisting, the court upheld the submission. In situations where it will be unjust and inappropriate for the decree to be binding extra territorially, a limping marriage will be created.

In order to reduce the incidence of Limping marriages, the House of Lords in the case of Indyka v. Indyka 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. Alternatively, to curb or reduce the occurrence of Limping marriages, there should be a uniform principle of Private International Law in relation to this particular area of law which is accepted throughout the world.

QUESTION 2

A polygamous marriage can be converted to a monogamous marriage by severing relations with all but one of the partners while a monogamous marriage can be converted to a polygamous relation by the man marrying more than one wife.

Since 1939, the English courts have adopted the principal of "mutation" as a general rule. Under that rule, the courts have begun to recognize the possibility that under certain conditions, a marriage which is potentially polygamous at its inception could be converted or mutated into one which is monogamous.

In many decisions following Hyde v. Hyde, the courts have often expressed regret that an innocent but victimized party had to be denied relief only because the character of the marriage in question was polygamous. However, commencing with an opinion tendered by Lord Maugham to the Committee of Privileges in the Sinha Peerage case, decisions developed around the principle 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.

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 Sara v. Sara, the Court decided 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. Such conversion was considered sufficient to attract the matrimonial relief available under the common law. The validity of polygamous marriage as a form of marriage is dependent on the law of the place of celebration of the marriage.

References

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