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ASSIGNMENT TITLE: MARRIAGES AND CONFLICT LAWS

QUESTION: EXPLAIN THE TERM “LIMPING MARRIAGE”. IDENTIFY THE WAYS, AT COMMNO LAW, BY WHICH THE INCIDENCE OF LIMPING MARRIAGE HAVE BEEN REDUCED.

EXPLAIN SUCCINTLY, MUTATION OR CONVERSION OF MARRIAGE IN CONFLICT OF LAWS.

1. LIMPING MARRIAGES

A layman could think that a “limping marriage” is used to describe a marriage facing serious difficulties or a symptom of an impaired marriage. However, this is a wrong assumption of the term "limping marriage".

The term “limping marriage” is a situation whereby a marriage is recognised in one country and not in another. This means that in one country, a divorce is recognised while in another country, the partners are still legally married.

However, on the **1st of March 2005**, **Council Regulation1** was introduced with the aim of harmonising the law in European Union. In other words, if a divorce/marriage is recognised in one European Union country then it should be recognised in all subject to certain criteria as set out below.

Limping marriage has to do with when one state will recognize and enforce a divorce/marriage granted, recognised and enforced in another state.

Sometimes, people who get married have different nationalities or even domiciles and this produces serious problems for the parties and for the courts which are expected to accept jurisdiction over persons only within their territorial boundaries, and to enforce the judgments and orders of foreign courts. These technical problems can be made worse by any personal oppositions between the parties which contributed to the marital breakdown. In some extreme cases, spouses move themselves and/or their assets to other jurisdictions to evade their responsibilities or liabilities, or they move to establish personal jurisdiction so that they can engage in forum shopping (another jurisdiction which is most favourable to the party filing the lawsuit). Hence, in a situation where a Russian man marries a Turkish woman and they live in Czech Republic until the breakdown, at which point the wife goes to Nevada because she has heard that the courts of the U.S. allow for quick divorces and generous alimony and property settlement awards. When he hears of this plan, the husband moves himself and all his assets to Ireland because he has heard that Irish courts do not recognise and enforce U.S. divorce decrees and their ancillary orders.

1 (EC) No. 2201/2203

**It should be noted that there is little or no reported cases of limping marriages in Nigeria**.

For example, in the case of **Brook v. Brook2**, **Cranworth** stated “...in the case of marriage celebrated abroad the lex loci contractus must determine the validity of the contract ....”

This means, as a general principle, that if a marriage is valid according to the lex loci celebrationis, then it “is good all the world over”, even though it would not constitute a valid marriage in the country of the domicile of either of the spouses; conversely, if a so-called marriage is not a valid marriage according to the lex loci celebrationis, then “there is no marriage anywhere”, even in a case where the same marriage, if celebrated in the place of the parties' domicile, would have been a perfectly valid marriage.

In the Irish case of **In re Estate of M'Loughlin3** it was clearly accepted that the lex loci celebrationis should apply to formal requirements. There the parties, both domiciled in Ireland, went through a ceremony of marriage in Wales, celebrated by a Catholic clergyman. By the law of England and Wales at the time the marriage was void as the parties had wilfully consented to its performance when it neither complied with **Lord Hardwicke's Act4** nor was performed in a Protestant church**. Flanagan, J**. accepted without serious question that the marriage was void for the purposes of Irish law. He relied strongly on the evidence that the parties themselves had admitted that the ceremony was null and void and had subsequently contracted another marriage with each other. He did not discuss the argument of counsel seeking to uphold the validity of the marriage, to the effect that **Lord Hardwicke's Act** was merely territorial, and that it did not bind parties domiciled in Ireland; on this argument the common law of England and Wales would continue to apply and the marriage would accordingly be valid.
It is worth recording **Walker, L.C.'s** clear statement that:

*“The capacity of the parties to contract marriage is governed by the law of the domicile, and the mode by the lex loci contractus.”*

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2 (1861) 9 H. L. Cas. 193

3 1 L.R. Ir. 421 (1878)

4 Marriage Act (1753)

Similarly, **Cherry, L.J.** said:
*“This view of the effect of this statute accords .... with the general rule of law as laid down in* ***Brooks v. Brooks*** *that although the essentials of the contract of marriage, e.g., the capacity to contract contractus, depend upon the lex domicilii, the forms of entering into the cont ract are to be regulated by*

*the lex loci, a convenient rule from which it would not be wise (even if it were permissible) to depart, unless we were constrained by the actual words of a statute to do so”.*

**Holmes, L.J.** was:
*“prepared to construe the Act as applying only to a marriage celebrated by a priest in Ireland, or celebrated elsewhere, by a priest who was an Irish subject.”*This was because in his view *“[t]he statutes on this subject were especially directed against the priest who celebrated the marriage. For him, as declared in the* ***Act of 1745****, it was a hanging matter; and that Act seems to have been levelled more against him than against the parties....”*.
Similarly, in **Du Moulin v Druitt**5 the court accepted the general rule that the lex loci celebrationis should apply.

To solve the problem of limping marriages, there will have to be circumstances in which people may obtain divorces/marriages in states in which they have no permanent or habitual residence. The main factor in all of this is the concept of habitual residence habitual residence requires not only an intention to reside in a place but also a physical presence in that place for a considerable period of time. The consequences of an invalid foreign divorce can be vast and costly and may ultimately lead to a subsequent marriage being declared null.

ii.) Reduction of Limping Marriages Contracted Outside Nigeria Under Common Law.

Ordinarily, Nigerian Courts recognise statutory marriages contracted in Nigeria. However due to the introduction of common law, S**ection 49 of the Matrimonial Causes Act6** provides the conditions in which Nigerian courts will recognise a foreign statutory marriage thus:
*"Subject to* ***Section 50 to 53*** *of this Act, a marriage between parties one of whom is a citizen of Nigeria, if it is contracted in a country outside Nigeria before a marriage officer in his office, shall be valid in law as if it had been contracted in Nigeria before a registrar in the registrar's office."*

5 3 l. C. L. R. 212 (Q.B. 1860)

6 Cap M7, Laws of the Federation of Nigeria, 2004

* The conditions stipulated in **Sections 50 to 53 of the Act** are that for such marriage to be recognised and valid under Nigerian law, The Act shall apply in relation to a marriage contracted before a marriage officer as nearly as may be contracted before a marriage registrar in Nigeria.
* In the same vein, common law rules on recognition of foreign marriages on the basis of the law of the place where the marriage was celebrated (loci celebrations) applies. This is given credence by **Section 3(1) (c) of the Act**. The Section provides that a marriage will be declared void if it is not a valid marriage under the law of the place where the marriage was celebrated, by reason of failure to comply with the requirements of the law of that place with respect to the form of solemnisation of marriages. Therefore, marriages which are validly contracted in the place of celebration will be recognised in Nigeria and shall confer jurisdiction on Nigerian Courts.
* Also **Section 32 of the Act** provides for evidence of marriage thus;
*"Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy thereof, purporting to be signed and certified as a true copy by the registrar of such district for the time being, and every entry in a marriage register book, or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person having by law or consent of parties authority to hear, receive, and examine evidence."*
* Consequently, upon presentation of a certificate of marriage duly certified by the registrar of a foreign district, such certificate shall be admissible as evidence of the marriage by Nigerian courts.
* Also, the **House of Lords** in the case of **Indyka v. Indyka7** came up with the 'real and substantial connection' test; therefore for a foreign decree or marriage/divorce to be recognised in another country, the parties require to show a real and substantial connection with the foreign country in question and the strict rules of domicile are relaxed.

2. Mutation or Conversion of Marriage.
Mutation or Conversion of marriage can be defined as the process whereby the character or nature of a marriage is changed from a polygamous or potentially polygamous marriage to a monogamous marriage. As a general rule, the English and Australian court in accordance with the principle in **Hyde v. Hyde8** will not grant matrimonial relief in polygamous unions, although the principle was established over a century ago. In recent years it has been conceded that character of a marriage may be changed from polygamous to monogamous by the law of the place of celebration. For example in the case of **Cheni v. Cheni9** the spouses were married according to Jewish rites in Egypt, according to Jewish Law, if there was failure of offspring of the union within a certain period, the husband could take a second wife. A child was born to the parties who came to England where they domiciled at the date of proceedings by the wife for a decree of nullity on the ground of consanguinity. The husband argued that the English Court had no jurisdiction to grant the decree because the marriage was polygamous. The Court **(Sir Jocelyn, P.)** held that the birth of a child made the marriage monogamous and the time to consider the nature of the marriage was the date of proceedings. The change was in accordance with the Egyptian law, therefore the mutation could take place.
In **Ali v. Ali10** the law of an acquired domicile was held to be relevant in deciding the nature of a marriage at the time of divorce proceedings and in displacing the effect of the lex loci celebrationis.
In **Parkasho v. Singh11** a change in loci celebrationis which had not been contemplated by the parties at the time of marriage, was held to affect the nature of marriage.

7 (1966) 3 All ER 583

8 (1866) LR 1 P&D 130

9 (1962) 3 All ER. 873

10 (1966) 1 All ER 664

11 (1967) 1 All ER 737

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