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**COURSE TITLE: CONFLICT OF LAWS II (LPI 406)**

**LEVEL: 400**

**ASIGNMENT TITLE: MARRIAGE AND CONFLICT OF LAWS**

1. The term limping marriage is that which has to do with issue of recognition of foreign decrees which is also related to that of capacity to marry in which the marital status of a couple is recognized as married under the law of one country while unrecognized in another country.

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 was granted and thus creates what is known as a limping marriage.

The phenomenon called a limping marriage has been described as the scandal and indignation which arises when a man and woman are held to who 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** came up with the test of real and substantial connection. Thus for a foreign decree to be recognised 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.

In order for there to be a reduction of incidence of limping marriages, it is important to establish cognizable universally acceptable standards regulating recognition of decrees granted in the **Matrimonial Causes Act.**

The first serious attempt to extend common law basis for recognition took place in 1953 in the now famous case of **Travers v Holley** decided by the English Court of Appeal. It was held that English Courts should recognise in foreign courts a like jurisdiction to that which they claim for themselves.

1. **Mutation or Conversion of Marriage in Conflict of Laws**

As a general rule the English Court will not grant matrimonial relief in polygamous and potentially polygamous unions. The recent decision of the Divisional Court in **Parkasho v Singh** constitutes another milestone in the détente from the **Hyde v Hyde** rule that an actually or potentially polygamous union cannot form the subject matter of a claim for matrimonial relief before an English Court.

The parties in the case of **Parkasho v Singh** were Sikhs of Indian origin who had gone through a ceremony of marriage in 1942 in conformity with Sikh rights. The Indian marriage would have then been recognised by the Indian Courts as a valid but potentially polygamous union. Likewise, whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated. There are however instances where the character of a marriage may be changed from polygamous to monogamous.

An example of a case of mutation of marriage can be seen in the case of **Cheni v Cheni [1962] 3 ALL ER 873**, H and W were Jews domiciled in Egypt, who contracted a Jewish marriage. They were uncle and niece, but under Jewish law this was not a bar to their marriage. Egypt had no civil marriage, but gave full recognition to religious marriages. Having later come to live in England, W sought a decree of nullity because of the degree of relationship. The judge refused, that the marriage was valid according to the lex domicili of both parties at the time of its celebration and was not wholly repugnant to common Western thinking.