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**LEVEL:400**

**COURSE: CONFLICT OF LAWS**

**ASSIGNMENT:(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.**

**ANSWER**

 **(1)** Limping Marriage, involves when a person is regarded as married by one country and as single by another.

The issue of recognition of foreign decrees is closely related to that of capacity to the Capacity to marry. This is because where a foreign decree has been recognized in the forum, a party can validly contract another marriage there. On the other hand, where the decree has not been recognized, the marriage is viewed as subsisting and neither parties has capacity to contract another marriage in that country. In ***Padolecchia v. Padolecchia.*** The husband was domiciled in Italy, he got married there in 1943, but later obtained a divorce in Mexico. This decree was not recognized in Italy, he however proceeded to contract another marriage in England. He later petitioned for a nullity decree with regards to his second marriage on the grounds that he was still married to his first wife since the Mexican decree was not recognized by the law of his domicile. The court held that he lacked capacity to contract the second marriage since his first marriage was still subsisting.

 A situation where the Nigerian court does not recognize the decree of annulment or dissolution, whereas it is recognized in the foreign country where it was granted, creates what could be seen as “Limping Marriage”. This phenomenon has however been described as “The scandal which arises when a man and a woman are held to be man and wife in one country and strangers in another”.

 At Common law in order to deal with the incidence of Limping marriage, the House of Lords, in ***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 “Real and Substantial connection” with the foreign country in question and the strict rules on domicile were relaxed.

 It is noteworthy to state that Legislators Law reformers and Judges are at one in considering Limping marriage as an unfortunate result of the law of Conflict of laws. That spouses should be married in one country and single in another is thus a consequence of the imperfections inherent in our present system of Private International laws.

**(2)** 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. African native law and custom espouse polygamy, both as a religious fact and as a cultural facet of African tribal life.

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, 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.

 As a general rule, the English court will not grant matrimonial relief in polygamous and potentially polygamous unions, as seen in ***Parkasho v. Singh***.Likewise, whether or not a marriage was celebrated. There are however instances where the character of a marriage may be changed from polygamous to monogamous. These are cases of mutation.

 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,*** 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.