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**ASSIGNMENT TITLE:** MARRIAGES AND CONFLICT OF LAWS

**QUESTION(S)**

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

**QUESTION 1**

**INTRODUCTION**

The consequences of an invalid foreign divorce can be vast and costly and may ultimately lead to a subsequent marriage being declared null. Where a foreign decree has been recognized in the forum, a party can validly contract another marriage there. Hence, the reason why the recognition of foreign decrees is closely related to that of capacity to marry. However, where the decree has not been recognized, the marriage is viewed as subsisting and neither party has capacity to contract another marriage in that country.

**THE TERM ‘LIMPING MARRIAGE’**

A leading case with regards Limping marriage is, ***Padolecchia v. Padolecchia*[[1]](#footnote-1)** where the court held that he lacked capacity to contract the second marriage since his first marriage was still subsisting. In that case, 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 ground that he was still married to his first wife since the Mexican decree was not recognized by the law of his domicile.

Furthermore, it is pertinent to note that a situation where the Nigerian Court does not recognize the decree of annulment or dissolution, where it is recognized in the foreign country where it was granted, creates what has been referred to as a ‘limping marriage’.

**THE WAY AT COMMON LAW, BY WHICH THE INCIDENCE OF LIMPING MARRIAGE HAVE BEEN REDUCED**

In the case of ***Wilson v. Wilson***[[2]](#footnote-2), limping marriage was defined as a phenomenon which is “the scandal that arises when a man and a woman are held to be man and wife in one country and strangers in another”. The House of Lords, in order to avoid this problem, came up with the test of ‘real and substantial connection’ in the leading case of ***Indyka v. Indyka***[[3]](#footnote-3) However, 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.

**CONCLUSION**

 Conclusively, it has been established above that the term ‘limping marriage’ can be seen to be the scandal that arises when a man and a woman are held to be man and wife in one country and strangers in another. Also, the test for ‘real and substantial connection’ with the foreign country in question has mitigated the harshness of the incidence of limping marriage at common law.

**QUESTION 2**

**INTRODUCTION**

The legally or formally recognized union of persons as partners in a personal relationship is popularly referred to as marriage. However, there are various types of marriages in the world at large today but the ones that are the most common and are the main focus in this write up are; monogamous and polygamous marriage. Monogamous marriages are those whereby there is a union between one man and one woman. On the other hand, Polygamous marriages are those in which a man is married to more than one husband at a time.

**MUTATION OF MARRIAGE IN CONFLICT OF LAWS.**

 Until recently, it was generally thought that the nature or character of a marriage is immutably determined by the law of the place of celebration[[4]](#footnote-4). In recent years it has been conceded that the character of a marriage may be changed from polygamous to monogamous. As a general rule, the English court will not grant matrimonial relief in polygamous and potentially polygamous unions as seen in the case of ***Ali v. Ali***[[5]](#footnote-5)where the suit was heard by **Cumming-Bruce J.** who first, considered the legal characteristics of the type of marriage over which English courts exercise jurisdiction to pronounce a decree of divorce.

His Lordship referred to ***Dicey Rule 38***,[[6]](#footnote-6) and concluded that the vital characteristic required is that of an exclusive voluntary union of one man and one woman for life. Secondly, his Lordship decided that a marriage potentially polygamous at its inception may be subsequently impressed with a monogamous character so as to found the jurisdiction of an English court.

In addition, Lord Penzance wrote in ***Hyde v. Hyde***[[7]](#footnote-7)that;

*‘it is obvious that the matrimonial law of this country 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’*

“Marriage” has been defined so as to include polygamy with regards to succession and legitimacy, while matrimonial matters, including matrimonial relief, have traditionally followed the ***Hyde v. Hyde*** rule.

 However, commencing with an opinion tendered by **Lord Maugham** to the Committee of Privileges in the ***Sinha Peerage case***,[[8]](#footnote-8) 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.

 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. Relying on Lord Maugham in the ***Sinha Peerage case***, the Court concluded that the marriage in question was no longer polygamous and therefore was outside the prohibition establishment in ***Hyde v. Hyde***.

**CONCLUSION**

It is pertinent to note that as the aforementioned cases have stated that, there has not been a whittling away of the rule in ***Hyde v. Hyde***; once a marriage has been converted into a monogamous one, “the barrier raised by ***Hyde v. Hyde***… no longer exists … and the court has jurisdiction” to decree the matrimonial relief sought. However, 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.

**BIBLIOGRAPHY**

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1. (1968) P.314. [↑](#footnote-ref-1)
2. (1872) L.R. P&D 435 at 442 [↑](#footnote-ref-2)
3. (1969) 1 A.C. 53. [↑](#footnote-ref-3)
4. A.V. Dicey, Conflict of Laws (7 ed. 1958) 270. [↑](#footnote-ref-4)
5. (1966) 1 ALL E.R. 664. [↑](#footnote-ref-5)
6. A.V. Dicey, Conflict of Laws (7 ed. 1958) 288. [↑](#footnote-ref-6)
7. (1866)L.R. 1 P&D. 130. [↑](#footnote-ref-7)
8. 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-8)