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COURSE: CONFLICT OF LAW

**Explain the term "limping marriage".**

Limping marriages can be defined as a situation whereby the Nigerian court does not recognise the decree of annulment or dissolution whereas it is recognised in the foreign country as valid.

In other words a limping marriage can be referred to as a situation whereby marriage is recognised in a state as valid whereas in another foreign country the annulment has been granted and it is valid.

Each country or state has a sovereign power or authority over its subjects and over every person situate in that territory, in the case of marriage this institution is recognised every part of the world.

In the case of PADOLECCHIA v PADOLECCHIA A domiciled Italian married his first wife in Italy, and then obtained a divorce from her, by proxy, in Mexico. At the time he was living in Venezuela and had never set foot in Mexico. The divorce was not recognised in Italy, where the marriage was regarded as indissoluble.

He went to live in Denmark, met a Danish girl domiciled in Denmark and on a day visit to England married her in a London register office: after which both returned to Denmark, where they intended to live. A few months later, however, the husband left home and did not return and later petitioned for a decree of nullity in respect of the London marriage on the ground of his own bigamy. Finding the petitioner had never abandoned his domiciled of origin in Italy, the court held that London ceremony null and void.

**Identify the ways, at common law, by which the incidence of limping marriage have been reduced.**

The most important judicial development is the decision of the House of Lords in the case of INDYKA v INDYKA the Test or real and substantial connection for a foreign decree to be recognised, the parties are required to show a real and substantive connection with the foreign country in question.

The implications of the decisions given by the House of Lords in the INDYKA case are far-reaching and the case has been used as a ratio decidendi.

**2. Explain succinctly, Mutation or Conversion of Marriage in Conflict of Laws.**

As a general rule the English court would not grant matrimonial relief in polygamous a potential polygamous unions.

Lord Penzance's dictum -in Hyde v. Hyde all parties to a polygamous or to a potentially polygamous marriage are precluded from seeking matrimonial relief from common law courts.

A polygamous or potentially marriage can only be mutated or converted as a result of change of religion or other factors can only be changed when a new domicile is acquired by the parties.

Polygamy is considered primarily a legal concept, giving rise to a particular legal status, but in fact polygamy symbolises a particular cultural and religious heritage.

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.

Dicey and Morris succinctly summarize the present law:

The proposition which was laid down in Ali v. Ali that a potentially polygamous marriage may become monogamous if the parties acquire an English domicile is a far-reaching one. It means that all those Common wealth immigrants living in England who are parties to a potentially polygamous marriage become entitled to English matrimonial relief as soon as they formed the intention to remain here permanently or indefinitely. The proposition may not be very logical and is difficult to reconcile with prior authority,

In all these cases of conversion, the marriage was only potentially polygamous; but there seems no reason why their principle should not be equally effective to convert an actually polygamous marriage into a monogamous one, after the number of wives has been reduced to one by death or otherwise. There is no English authority on the converse problem, namely, can a monogamous marriage be converted into a polygamous one. The answer may be that the marriage has, so to speak, the benefit of the doubt: if it is monogamous at its inception, it remains monogamous although a change of religion or of domicile may entitle the husband to take another wife; if it is polygamous at its inception, it may become monogamous by reason of a change of religion, of domicile, or of law before the happening of the events which give rise to the proceedings...

CONVERTIBLE MARRIAGE

In the case of ALI v. ALI

Ever since the decision in Hyde v. Hyde (now more than a century old) English Courts have declined to grant matrimonial relief in respect of a polygamous marriage. When can a marriage be referred to as polygamous? 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 (lex loci celabrationis). In recent years it has been conceded that the character of a marriage may be changed from polygamous to monogamous.

In cases where such a mutation was recognised as in Cheni v. Cheni the change was in accordance with the law of the place of celebration itself.

The facts of the case of Ali v. Ali

The husband was born in India. At the age of 24 he came to England, he obtained a job and decided to reside there permanently. Four years later he returned to India where he married an Indian wife chosen by his father. The ceremony took place according to the rites of the Muslim faith which was the religion of both parties. By Muslim law the husband was permitted to take further wives. The marriage was therefore potentially polygamous at its inception. The husband left for England shortly after the marriage and resumed his employment there. Gumming-Bruce, J.) decided that by the middle of 1961 he had acquired a domicile of choice in England. The wife followed and cohabited with her husband in England. In 1959 the husband applied for British nationality and in the same year a child was born to the parties, shortly thereafter the wife left the matrimonial home with the child and returned to India. In 1960 the husband obtained a British passport, continuing to live permanently in England. In 1963 the husband petitioned for divorce on the ground of desertion. The wife denied desertion and alleged cruelty. She also alleged that the Court had no jurisdiction on the ground that the marriage was polygamous. In 1964, the husband committed adultery, the wife cross-petitioned for a dissolution of the marriage on this ground. The suits were heard by Cumming-Bruce, J. who held that the Court could not exercise jurisdiction in respect of the offences of desertion and cruelty because they took place, if at all, at a time when the marriage was still polygamous. However, the learned judge granted the wife a decree nisi on the ground of adultery as this offence took place after the character of the marriage had been rendered monogamous by the acquisition of an English domicile of choice by the husband.

His Lordship referred to Dicey Rule 38: 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. Cheni v, Cheni6 was relied on in support. Next Cumming-Bruce, J. investigated the precise effect of the acquisition of an English domicile by the husband.

Whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated (lex loci celebrationis).

In conclusion

It can be deduced from the case of Ali v Ali the principle that the lex loci celebrationis unarguably determines the character of a marriage has been displaced in favour of a limited recognition of the relevance of lex domicile in this context.