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ASSIGNMENT TITLE: MARRIAGES AND CONFLICT LAWS

1. Explain the term “Limping Marriage"

Conflict of marriage laws is the conflict of laws with respect to marriage in different jurisdictions. When marriage-related issues arise between couples with diverse backgrounds, questions as to which legal systems and norms should be applied to the relationship naturally follow with various potentially applicable systems frequently conflicting with one another.  
 In relation to this, limping marriage is simply a situation whereby the parties are considered to be married in one jurisdiction and divorced in another jurisdiction. For example, an Irishman habitually resident in Edinburgh may marry a New York woman who is habitually resident in Rome. The wedding takes place in London. Several questions may arise in relation to this marriage. By the law of which country or countries should the formal and essential validity of the marriage be determined? What court should have jurisdiction to annul the marriage? In what circumstances should a foreign nullity decree be recognised?  
 There are several reasons for these limitations. There is a wide divergence among the laws of different countries as to the circumstances in which a marriage will be valid or null. Some countries categorise invalid marriages as either void or voidable; others have no concept of a voidable marriage; still others have a third category of “non-existent” marriage.   
In summary, 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.  
  
  
Ways By which Limping Marriages Can Be reduced At common law.  
  
1.) There should be international uniformity in defining a person's marital status so that people will not be treated as married under the law of one state, but not married under the law of another. Although, there may be situations in which it would be quite unjust and inappropriate for the courts of one state to be bound by another state's laws as to status  
  
2.) Favor matrimonii upholds the validity of all marriages entered into with a genuine commitment. But, as states become increasingly secular and allow the termination of marriage through no fault divorce and other less confrontational mechanisms, the policy for recognition and enforcement of foreign decrees may be changing from favor matrimonii to favor divortii (i.e. upholding the validity of the divorce wherever possible).  
  
3.) Wherever possible, the results of any litigation should give effect to the legitimate expectations of the parties as to the validity or termination of their marriage. Most U.S. States have codified this concept with putative spouse laws. In other words, a minor flaw in the marriage ceremony should not invalidate a marriage.  
  
4.) That the application of all rules should, wherever possible, produce predictable and appropriate outcomes. There is a clear benefit that laws should be certain and easy to administer. Courts have the benefit of expert evidence and time in which to conduct their legal analysis. But the same issues arise far more often in everyday situations where immigration officers, social welfare and tax authorities, and businesses will have to decide whether persons claiming an eligibility or a liability based on their status as a spouse are validly married. If conflict rules are obscure and complicated, this can result in real difficulties for all involved.  
  
5.) Even though policies related to community life reflect the views, opinions, and the prejudices of that community, local laws have a strong claim to specify the formal requirements for marriages celebrated within their jurisdiction(this is, after all, the reason that the lex loci celebrationis is usually accepted as the law to determine all formal requirements for the marriage). For example, the public interest requires that marriage ceremonies are performed openly and with due publicity, with all valid marriages properly recorded.  
  
6.) A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.” i.e. it introduces a form of proper law test of policy which could potentially lead to the application of a third state's policies which is a confusing possibility. This principle emulates from the "full faith and credit" clause of Article IV of the Constitution.  
  
  
2.) Explain succintly, Mutation or Conversion of Marriage in Conflict of Laws.  
  
Generally, in the rule in Hyde v. Hyde (1866), the English Court did not give room for matrimonial redress in polygamous marriages. A marriage is considered polygamous based on the law of the place the marriage took place (lex loci celebrationis). For example, if two Muslims get married in the Northern region of Nigeria, then the marriage will be considered polygamous, because their customs allow it.   
  
On this note, Mutation or Conversion of Marriage is the process in which the character of a marriage is modified in such a way that a polygamous marriage can become a monogamous marriage.  
In Ali v. Ali (1968), the husband was born in India. At 24, he came to England, to live. Four years later he returned to India, to marry an Indian wife. The ceremony took place according to Muslim faith. The marriage was polygamous. The husband left for England. The wife moved with her husband. In 1959 the husband applied for British passport, in the same year their child was born. Shortly after, the wife left with the child and returned to India. In 1960 the husband obtained a British passport, he was living with a woman and a child was born of this relationship. In 1963 the husband filed for divorce on the ground of desertion. The wife alleged that the English Court had no jurisdiction.  
In 1964, the husband committed adultery, the wife then petitioned for divorce on this ground.   
The suits heard by Cumming-Bruce, J. held that the Court could not exercise jurisdiction on desertion when the marriage was polygamous. However, the judge granted the wife a decree nisi on the ground of adultery as it took place after the marriage was rendered monogamous by the acquisition of an English domicile.   
  
He referred to Dicey Rule and concluded that the characteristic required is an exclusive "voluntary union of one man and one woman for life". He also decided that a marriage which was polygamous may be impressed with a monogamous character to found the jurisdiction of an English court. Cheni v, Cheni (1965) was relied on in support.   
However, the judge accepted it an anomaly that intention on the part of the husband to acquire a domicile may be sufficient to effect a conversion to monogamy.

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