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**MATRIC NO: 16/LAW01/195**

**COURSE: CONFLICT OF LAWS**

**COURES CODE: LPI406**

**ASSIGNMENT QUESTION:**

1. Explain the term ‘limping marriage’; identify the ways at which the incidence of limping marriage has been reduced.
2. Explain succintly, mutation or conversion of marriage in conflict of law.

**ANSWER**

1. The term ‘limping marriage’ refers to the marital status of the people considered as married under the law of one state or country, while under the law of another state such marriage is inexistence and not recognized as a marriage. A perfect illustration of how limping marriage occurs is shown in the case of ***Padolechia v. Padolechia*** in this case the husband was domiciled in Italy, he got married there in 1943 but later got divorce in Mexico. The divorce was however not recognized in Italy. He proceeded to contract another marriage in England. Then he later petitioned for a nullity decree with regards to his second marriage on the ground that he was still marriage to his first wife since the Mexican degree was not recognized by the law of his domicile. The court held that he lacked capacity to contract to the second marriage since this first marriage was still subsisting. Also in Kendall v. Kendall, the husband’s lawyers deceived the wife into applying for a divorce which she was not desirous of obtaining. The processes were filed in language she did not understand. The recognition was withheld in England on grounds of public policy.

B. The incidence of limping marriage was reduced by the House of Lords in the case of ***Indyka v. Indyka***, where they came up with the test of ‘real and substantial connection’. Hence 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 was relaxed

2. The general rule in Conversion of marriage is that the English court will not grant matrimonial relief in polygamous and potentially polygamous union as seen in the cases of ***Parkasho v. Singh [1967] 2 W.L.R. 946***; **Ali v. Ali [1966] 1 ALL E.R 664**. Also whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated. There are instances where the character of a marriage may be changed from polygamous to monogamous and they are cases of mutation, it is usually by change of domicile. In ***Cheni v. Cheni [1962]3 ALL E.R.873***  the spouses were married according to Jewish rites in Egypt where they were domiciled. By Egyptian law the religious law of the parties determined the validity of the marriage. By Jewish law if there was failure of off spring of the Union within a certain period the husband could take another wife without formally divorcing the first. On the other hand, the birth of a child within that period made the marriage monogamous for all purposes. A child was in fact born to the parties who later came to England where they were domiciled at the date of proceedings by the wife for a decree of nullity on the ground of consanguinity. The husband argued that the English court had no jurisdiction to Grant the decree because the marriage was potentially polygamous. The court held that the birth of the child rendered the marriage monogamous and that the proper time to consider the character of the marriage was the date of proceedings. The learned judge cited two instances in which a potentially polygamous union may assume the characteristics of a Monogamous marriage: Two spouses may contract a valid polygamous union and subsequently join a monogamous Sect, or go through a second ceremony in a place where monogamy is the law. Again, A Marriage in its inception potentially polygamous though in fact monogamous maybe rendered Monogamous for all time by legislative action proscribing polygamy. It is clear that the learned judge did not invoke the principle late relied on by gumming. Bruce, J. In ***Ali v. Ali*** which was equally available in ***Cheni v.Cheni***, Namely, that by the time the Proceedings were commenced the parties had acquired an English domicile. But Sir Jocelyn Simon, P. did hint that the nature of a marriage might be altered by change of domicile. His Lordship stated that "There are no marriages which are not potentially polygamous, in the sense That they may be rendered so by a change of domicile and religion on the part of the spouses", And conversely it may be expected that spouses who married in the polygamous setting might "By personal volition or act of state "change their union to a monogamous type.