Name: Fakunle Olatomiwa Victoria

Matric number:16/law01/088

Course: Conflict of law

Level: 400

ANSWER

1). Limping marriage is a situation where foreign decree that have been recognized in the forum, a party can validly contract another marriage there . On the other hand where the decree as not recognized the marriage is view as subsisting and neither party has the capacity to contract another marriage in that country.

This phenomenon as been describe as "the scandal which arise when a man and wife are held to be man and wife in one country and stranger in another" Wilson v Wilson. In the case of Padolecchia v Padolecchia the husband was domciled in Italy, he got married there in 1943 but later obtained a divorce in Mexico. The decree was not recognize in Italy. He however proceed to contract another marriage in England. He later petitioned for nullity decree with regards to the second marriage on the ground that he was still married as the law of divorce made in Mexico was not recognized in his domiciled. The court held that he lacks the capacity to contract the second marriage as his first marriage is subsisting.

In order to avoid this problem, the House of Lords in the case of 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 show a 'real and substantial connection' with the foreign country in question and the strict rules of the domicile were relaxed.

2). Ever since the decision in Hyde v. Hyde2 (now more than a century old) English and Australian Courts have declined to grant matrimonial relief in respect of a polygamous

marriage. When is a marriage 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 ~elebration.~ 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.

His Lordship considered Hyde v. Hyde. If monogamous character can be impressed upon a potentially polygamous marriage, on what basis may that decision be explained? In that case the husband had acquired an English domicile before his wife married a second time and allegedly committed adultery by doing so. He had also changed his religion. The answer given by Cumming-Bruce, J. was that the importance of the concept of domicile in relation to the capacity to marry was at the time only "dimly appreciated".

In recent years a rule has developed that monogamous character may be impressed upon a polygamous marriage by a change in the circumstances surrounding the marriage. An example is Cheni v. Cheni.In that case 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 offspring 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 juris diction to grant the decree because the marriage was potentially polygamous. The Court (Sir Jocelyn Simon, P.) 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

charac teristics 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 may be rendered monogamous for all time by legislative action proscribing polygamy.15 It is clear that the learned judge did not invoke the principle later 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 marry polygamously might "by personal volition or act of state" change their union to a monogamous type.

Reference

Private international law: Nigerian perspectives

A.V. dicey conflict of law (1958)

J. H. C. Morris, "The Recognition of Polygamous Marriages in English Law" (1953)