NAME: IWOK UFOROABASI FRIDAY

MATRIC NO: 16/LAW01/112

COURSE TTILE: CONFLICT OF LAWS II

COURSE CODE: LPI 406

LEVEL: 400

ASSIGNMENT TITLE: MARRIAGES AND CONFLICT OF LAWS

ANSWER

**Question 1**

Limping marriages refers to the marital status of people considered as married under the law of one state or country while under the law of another state such marriage is unrecognized, considered inexistent and not binding.

In the case of *Padolechia v padolechia* the husband was domiciled in and married in Italy in 1943 but subsequently obtained a divorce in Mexico and contracted another marriage in England. In a petition to annul the marriage on the ground that the first marriage was valid and subsisting up held the submission.

In situations where it will be unjust and inappropriate for the decree to be binding extra territorially, a limping marriage will be created.

In the case of *Kendall v Kendall (1977)*

The husband’s lawyers deceived the wife into applying for a divorce which she was not desirous of obtaining. The processes where filed in a language she did not understand. The recognition was withheld in England on grounds of public policy.

To reduce the incidence of limping marriages, it is necessary to establish cognizable universally acceptable standards regulating recognition of decrees granted pursuant to the Matrimonial Causes Act instead of the present situation which leaves parties to a marriage contract to the whims of each nation state and the uncertainty that is foisted on parties extra territorially.

**Question 2**

Conversion of Marriage in Conflict of Laws

As a general rule, the English court will not grant matrimonial relief in polygamous and potentially polygamous unions in the case *of Parkashov v Singh (1967) 2 W.L.R 946; Ali v Ali (1966) 1 ALL E.R. 664,* likewise, whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated. There are however instances where the character of a marriage may be changed from polygamous to monogamous. These are cases of mutation. This is usually by change of domicile in *Cheni v Cheni* (1962) ALL E.R. 873

In *Ali v Ali* the husband was born in India. At the age of 24 he came to England, obtaining a job and living permanently there, 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 employment there. The learned judge (Cumming-Bruce, J.) decided by the middle of 1961 he had acquired a domicile of choice in England. In 1959 the husband applied for British nationality and in the same year a child was born to the parties. Shortly after 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 1964 he began living with a woman and a child was born of this relationship. In 1963 the husband petitioned for a

Divorce on ground of desertion. The wife denied desertion and alleged cruelty. She also alleged that the court had no jurisdiction on the ground the marriage was polygamous.

In 1964, when 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.

In reaching the conclusion, Cumming-Bruce, J. first considered the 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, 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.

The recent case *Parkasho v.* *Singh* is interesting as a confirmation of *Ali v. Ali* and particularly for the comments of Sir Jocelyn Simon, P. on *Cheni v. Cheni* in the light of the former case.

The parties were married in India in 1942 in potentially polygamous form. In 1950 a child was born of the union. In 1955 the husband came to England and was followed by his wife and child in 1963. In maintenance proceedings before magistrates the husband took the preliminary point that the tribunal had no jurisdiction because the marriage was potentially polygamous. The magistrates found (without reasons) that the marriage was potentially polygamous at its inception and that its character had not been altered by the Hindu Marriage Act 1955 which purported to confer monogamous character on potentially polygamous unions between Hindus in India. Consequently they dismissed the wife’s application for maintenance on the ground of neglect by the husband. The wife appealed. The court (Sir Jocelyn Simon, P., and Cairns, J.) held that the Hindu Marriage Act, 1955, although not possibly in the contemplation of the parties at the time of the marriage, was capable of converting the potentially polygamous union into one of a monogamous nature.

Cairns, J., in upholding the appeal, posed four questions for consideration:

1. Can a marriage be converted from one category to another: from the category of potentially polygamous marriages to that of monogamous marriages?

2. If such a transmutation can take place, what is the proper time to consider the nature of the union in order to ascertain jurisdiction?

3. Can the relevant change be effected by the legislation?

4. Did the Hindu Marriage Act of 1955 have this effect?