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MATRIC NUMBER: 16/LAW01/025

ASSIGNMENT TITTLE: MARRIAGES AND CONFLICT OF LAWS

COURSE TITTLE: CONFLICT OF LAWS

COURSE: LPI 406

QUESTION: Explain the term "limping marriage". Identify the ways, at common law, by which the incidence of limping marriage have been reduced. 2. Explain succintly, Mutation or Conversion of Marriage in Conflict of Laws.

People would think that a limping marriage is one which is facing challenges or difficulties but no its not. The issue of recognition of foreign decrees is closely related to that of capacity to marry. This is because where a foreign decree has been recognized in the forum, a party can validly contract another marriage there. On the other hand, where the decree has not been recognized, the marriage is viewed as subsisting and neither party has capacity to contract another marriage in that country. In **padolecchia v padolecchia,** the husband was domiciled in Italy. He got married there in 1943 but later obtained a divorce in Mexico. This decree was not recognized in Italy. He however proceeded to contract another marriage in England. He later petitioned for a nullity decree with regards to his second marriage on the ground that he was still married to his first wife since the Mexican decree was not recognized by the law of his domicile. The court held that he lacked capacity to contract the second marriage since his first marriage was still subsisting.

A situation where the Nigerian court does not recognize the decree of annulment or dissolution, whereas it is recognized in the foreign country where it was granted, creates what has been referred to as a **“limping marriage**” This phenomenon has been described as **“the scandal which arises when a man and a woman are held to be man and wife in one country and strangers in another”  “limping marriage” developed as a result of marriages being recognised in one EU country and not in another. Prior to 2005, different approaches taken by different EU countries meant that your marriage and/or a subsequent Divorce could be recognised in some countries but not in others.**

**WAYS AT COMMON LAW BY WHICH THE INCIDENCE OF LIMPING MARRIAGE HAVE BEEN REDUCED**

In order to avoid the problem of a limping marriage, 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 required to show a real and substantial connection with the foreign country in question and the strict rules on domicile were relaxed.

**MUTATION OF MARRIAGE**

**As the general rule**, the English court will not grant matrimonial relief in polygamous and potentially polygamous unions **parkasho v singh 1967**, **ali v ali**. Likewise whether or not marriage will be deemed polygamous is determined by 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 as seen in the case of **cheni v cheni**

The recent decision of the divisional court in **parkasho v singh** constitutes another milestone in the détente from the **hyde v hyde** rule that an actually or potentially polygamous union cannot form the subject matter of a claim for matrimonial relief before an English court. The parties in the present case where Sikhs of indian origin who had gone through a ceremony of marriage in 1942 in conformity with Sikhs rights. The indian marriage would have then been recognized by the indian courts as a valid, but potentially polygamous, union. A child was born in 1950 and in 1955 the husband came to live in England. It appears from the report that he never acquired a domicile in England at any possible relevant time. His wife and child joined him in 1963 and they all lived together until june 1964. In april 1965 the wife complained to the wolverhampton justices that the husband has been guilty of wilful neglect to maintain her and the child of the marriage. The husband doubtlessly relying on **sowa v sowa** took the point that the bench was without jurisdiction to hear the complaint. The magistrates decided to treat the matter as a preliminary issue and heard evidence of the wife simply as to the 1942 ceremony and the familys subsequent movements, corroborative evidence concerning the ceremony from the relative of the wife and evidence of two experts on indian law. The experts called on the wifes behalf was on the opinion that the operation of the indian hindu marriage act 1955 was to render the parties marriage monogamous. The expert on the other side testified in equivocal terms.

**In conclusion,** it might be said that, because a change of domicile on the husband’s part since the institution of divorce proceedings does not oust the jurisdiction of an English court, provided an English domicile did not exist at the institution of the suit, A post commencement change in the character of the marriage should similarly not deprive the English court of jurisdiction. This seems to be a closer analogy and it is to be hoped that it would prove to be acceptable.