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COURSE TITLE: CONFLICT OF LAWS II

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Question:

1. Explain the term “limping marriage”. Identify the ways, at common law, by which the incidence of limping marriage has been reduced.
2. Explain succinctly, mutation or conversion of marriage in conflict of laws.

ANSWER

1. The term limping marriage 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. Although there is no universal definition for the term or its etymology, in the case of *Padolechia v Padolechia*,[[1]](#footnote-1) 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, the court 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.

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.”[[2]](#footnote-2) 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 leaving parties to a marriage contract to the whims of each nation state and the uncertainty that is foisted on parties extra territorially. However, in efforts to avoid such problems, the House of Lords in the case of *Indyka v Indyka*,[[3]](#footnote-3) came up with the test of ‘real and substantial connection’. It was established that if there is a real and substantial connection between the petitioner and the foreign court granting the divorce decree, the English court will recognise the foreign decree. Thus, for a foreign decree to be recognised, 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.

2. The general rule regarding marriage was given in Hyde v. Hyde (1866). However, the English Court did not give room for matrimonial redress in polygamous marriages. Hence, a marriage is considered polygamous based on the law of the place the marriage took place (lex loci celebrationis). A perfect example of this situation is in the Northern part of Nigeria where Sharia law predominantly governs their way of life. Muslims domiciled there get married and the marriage is considered polygamous. However, not all polygamous marriage stays polygamous neither does all monogamous marriage begin as monogamous.

Marital conversion is a religious conversion upon marriage, either as a conciliatory act or a mandated requirement according to a particular religious belief. In simple terms, an example of a conversion of marriage is a polygamous marriage being converted to a monogamous marriage. This opens room to the following posed questions; can a polygamous marriage be converted to a monogamous marriage? What law governs such? If a party has the capacity to marry under the law of his domicile, in what scenarios could the courts of the country refuse recognition of that capacity? These questions were posed by the decision of Sir Jocelyn Simon P in the case of *Cheni v Cheni*.[[4]](#footnote-4) For comprehension, it is imperative that a briefing of the case is provided. In 1924, a man and woman who were Jews domiciled in Egypt had a marriage ceremony under Jewish law. They were in fact uncle and niece. This was allowed under Jewish law. More so, the man was allowed to have another wife if within ten years his first wife does not bear him a child. But these were fully controlled and sanctioned by the Chief Rabbi and was subject to strict conditions. If a child was born within the ten years, it would automatically make the marriage monogamous for all purposes. In 1957, the parties went to England, acquiring a domicile of choice. There were no laws in Egypt regarding civil marriages so Egyptian laws referred questions regarding the validity of marriage to the religious law of the parties. On petition to annul the marriage by the wife, the husband took the preliminary point that the English court did not have jurisdiction to try the suit as the marriage was potentially polygamous. It was held that the marriage at its inception in 1924 was potentially polygamous under Egyptian law and that therefore *prima facie* the court had no jurisdiction. However, the judge accepted the petitioner’s counsel argument that the time for examining the marriage is not at the inception, rather at the date of the proceeding. Hence, it was established that where a marriage polygamous in its inception is rendered monogamous by the time of a suit, the court has jurisdiction.

The holding that a marriage from which all “polygamous potential” has been removed is thereby converted into a monogamous union is a desirable and logical conclusion. The case of *Ali v Ali*,[[5]](#footnote-5) applied the decision in *Cheni v Cheni*.

1. (1968) P. 314 [↑](#footnote-ref-1)
2. Per Lord Penzance in Wilson (1872) L.R. P&D 435 at 442. [↑](#footnote-ref-2)
3. (1969) 1 A.C. 53. [↑](#footnote-ref-3)
4. (1963) 2 W.L.R. 17 (1962) 3 All E.R. 873. [↑](#footnote-ref-4)
5. (1966) 1 All E.R. 664. [↑](#footnote-ref-5)