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**LEVEL:** 400

**COURSE CODE:** LPI406

**COURSE TITLE:** CONFLICT OF LAWS

**LECTURER:** FABAMISE SESAN T. ESQ

**ASSIGNMENT:** MARRIAGES AND CONFLICT OF LAWS

**QUESTION**

1. Explain the term **“Limping Marriage”**. Identify the ways at common law, by which the incidence of limping marriage have been reduced.
2. Explain succinctly, Mutation or Conversion of Marriage in Conflict of Laws.

**ANSWER[[1]](#footnote-2)**

1. The issue of recognition of foreign decrees is closely related to that of capacity to marry. Conflict of marriage laws is the conflict of laws with respect to marriage in different jurisdictions. When marriage-related issues arise between couples with diverse backgrounds, questions as to which legal systems and norms should be applied to the relationship naturally follow with various potentially applicable systems frequently conflicting with one another.  
   In relation to this, a situation where the Nigerian court does not recognise the decree of annulment or dissolution, whereas it is recognised in the foreign country where it was granted, creates what has been referred to as a **“limping marriage”**. Limping marriage is simply a situation whereby the parties are considered to be married in one jurisdiction and divorced in another jurisdiction. This phenomenon has been described as the scandal which arises when a man and a woman are held to be a man and wife in one country and strangers in another. For example, an Irishman habitually resident in Edinburgh may marry a New York woman who is habitually resident in Rome. The wedding takes place in London. Several questions may arise in relation to this marriage. By the law of which country or countries should the formal and essential validity of the marriage be determined? What court should have jurisdiction to annul the marriage? In what circumstances should a foreign nullity decree be recognised? In ***Padolecchia v. Padolecchia,*** the husband was domiciled in Italy. He got married there but later obtained a divorce in Mexico. This decree was recognised in Italy. He however proceeded to contract another marriage in England. He later petitioned for 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 recognised by the law of his domicile. The court held that he lacked the capacity to contract the second marriage since his marriage was still subsisting.   
   There are several reasons for these limitations. There is a wide divergence among the laws of different countries as to the circumstances in which a marriage will be valid or null. Some countries categorise invalid marriages as either void or voidable; others have no concept of a voidable marriage; still others have a third category of **“non-existent”** marriage.

In a bid 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 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.  
 There should be international uniformity in defining a person's marital status so that people will not be treated as married under the law of one state, but not married under the law of another. Although, there may be situations in which it would be quite unjust and inappropriate for the courts of one state to be bound by another state's laws as to status.  
Even though policies related to community life reflect the views, opinions, and the prejudices of that community, local laws have a strong claim to specify the formal requirements for marriages celebrated within their jurisdiction(this is, after all, the reason that the lex loci celebrationis is usually accepted as the law to determine all formal requirements for the marriage). For example, the public interest requires that marriage ceremonies are performed openly and with due publicity, with all valid marriages properly recorded.

1. Generally, in the rule in ***Hyde v. Hyde (1866)***, the English Court did not give room for matrimonial redress in polygamous marriages. A marriage is considered polygamous based on the law of the place the marriage took place (lex loci celebrationis). For example, if two Muslims get married in the Northern region of Nigeria, then the marriage will be considered polygamous, because their customs allow it.   
   On this note, Mutation or Conversion of Marriag[[2]](#footnote-3)e is the process in which the character of a marriage is modified in such a way that a polygamous marriage can become a monogamous marriage.  
   In ***Ali v. Ali (1968),*** the husband was born in India. At 24, he came to England, to live. Four years later he returned to India, to marry an Indian wife. The ceremony took place according to Muslim faith. The marriage was polygamous. The husband left for England. The wife moved with her husband. In 1959 the husband applied for British passport, in the same year their child was born. Shortly after, the wife left with the child and returned to India. In 1960 the husband obtained a British passport, he was living with a woman and a child was born of this relationship. In 1963 the husband filed for divorce on the ground of desertion. The wife alleged that the English Court had no jurisdiction.  
   In 1964, the husband committed adultery, the wife then petitioned for divorce on this ground.   
   The suits heard by Cumming-Bruce, J. held that the Court could not exercise jurisdiction on desertion when the marriage was polygamous. However, the judge granted the wife a decree nisi on the ground of adultery as it took place after the marriage was rendered monogamous by the acquisition of an English domicile.   
   He referred to Dicey Rule and concluded that the characteristic required is an exclusive **"voluntary union of one man and one woman for life"**. He also decided that a marriage which was polygamous may be impressed with a monogamous character to found the jurisdiction of an English court. ***Cheni v, Cheni (1965)*** was relied on in support.   
   However, the judge accepted it an anomaly that intention on the part of the husband to acquire a domicile may be sufficient to effect a conversion to monogamy. Generally, in the rule in ***Hyde v. Hyde (1866),*** the English Court did not give room for matrimonial redress in polygamous marriages. A marriage is considered polygamous based on the law of the place the marriage took place (lex loci celebrationis). For example, if two Muslims get married in the Northern region of Nigeria, then the marriage will be considered polygamous, because their customs allow it.   
     
   [[3]](#footnote-4)

1. Marriages and conflict of laws

   Lord penzance in Wilson v. Wilson (1872) L.R. P&D 435 at 442 [↑](#footnote-ref-2)
2. Cap 220 LFN 1990.

   Supra note 8 [↑](#footnote-ref-3)
3. The Domicile and Matrimonial Proceedings Act, 1973

   Matrimonial causes Act [↑](#footnote-ref-4)