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Assignment Title: 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 **succintly**, Mutation or Conversion of Marriage in Conflict of Laws.

Answer

Marriage and Conflict of Laws

Marriage can be defined as the legally or formally recognized union of two people as partners in a personal relationship. It must be voluntary. In another definition, Marriage, also called matrimony or wedlock, is a culturally recognized union between people, called a spouse that establishes rights and obligations between them, as well as between them and their children, and between them and their in-laws.

1. Limping Marriage

The term limping Marriage means arises in 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. This phenomenon has been described as a scandal which arises when a woman and a man are held to be husband and wife in one country and strangers in another.

The term "limping marriage" was provided by the Goa High Court in *Pires V. Pires* [AIR][1967,[Goa, Daman and Diu, 113]for situations where a couple was considered married in one country and divorced in another. In this case the court tried to lay down certain principles of Private International Law to be applicable in India as it interpreted S.13 of the Civil Procedure Code (CPC) 1908.

The ways at common law by which the incidence of limping marriage have been reduced

Common law has provided various ways in which the incidence of limping marriage can be reduced. One of these ways is provided for in the case of *Indyka v Indyka* [1969] 1 AC 33. Here, the House of Lords came up with the test of real and substantial connection test to combat the issue of limping marriages and reduce its occurrence. The issue in question is whether the court will recognize the divorce granted by foreign judgment.

Lord Wilberforce in the case provided that an English court should recognise a divorce decree granted in a foreign country where there was a real and substantial connection between the petitioner for the divorce and the country exercising the jurisdiction.

Lord Wilberforce said: ‘In my opinion, it would be in accordance with the developments I have mentioned and with the trend of legislation – mainly our own but also that of other countries with similar social systems – to recognise divorces given to wives by the courts of their residence wherever a real and substantial connection is shown between the petitioner and the country, or territory, exercising jurisdiction.’

2. Mutation or Conversion of Marriage in Conflict of Laws

There are basically two types of marriages. One of them is Monogamous marriage and the other is Polygamous marriage.

Mutation of marriage basically occurs in instances where the character of a marriage may be change from polygamous to monogamous marriage. This usually occurs by change of domiciles.

The leading case authority on this issue is the case of *Ali v Ali* (1966)2 W.L.R 620, Dicey and Morris succinctly summarize the present law: The proposition laid down in *Ali v. Ali* that a potentially polygamous marriage may become monogamous if the parties acquire an English domicile is a far-reaching one. It means that all those Commonwealth immigrants living in England who are parties to a potentially poly-gamous marriage become entitled to English matrimonial relief as soon as they formed the intention to remain here permanently or indefinitely. The proposition may not be very logical and is difficult to reconcile with prior authority, notably with *Hyde v. Hyde* itself.

An instance can also be seen in the given case of *Bibi v Chief Adjudication Officer* (1997) Times 10/7/97, CA; P was the first wife of H, a British citizen normally domiciled in the UK. H and P married in Bangladesh in 1966 and in 1969 H married a second wife W2, again in Bangladesh. Both P and W2 remained living in Bangladesh until 1986, when P and her children joined H in the UK. In 1988 H died, and P claimed a widowed mother's allowance under s.25 of the Social Security Act 1975. Her claim was rejected, and the Court of Appeal upheld the refusal. Provision had been made by regulation for the payment of benefit to some survivors of potentially polygamous marriages which were in fact monogamous, said Ward LJ, but where the marriage was actually polygamous none of the "wives" was in law a widow entitled to the benefit in question

Also, another instance is provided for in the case of in *Sara v. Sara*, the Court decided that a potentially polygamous marriage contracted in India had been converted into a monogamous union because the parties had acquired a new domicile of choice in British Columbia. Such conversion was considered sufficient to attract the matrimonial relief available under the common law. Relying on Lord Maugham in the *Sinha Peerage case*, the Court concluded that the marriage in question was no longer polygamous and therefore was outside the prohibition established in *Hyde v. Hyde [1866]1 pd.*

In conclusion, other cases include *Mirza v Mirza* (1966)110 S.J 708, *Sinha Peerage case* (1946)1 ALL.E.R, *Cheni v Cheni* (1965) P 85, *Udny v Udny* [1869]1 sc. among many others.