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ASSIGNMENT TITLE: MARRIAGES AND CONFLICT OF LAWS

ANSWERS

1: This borders on the issue of recognition of foreign decrees relating to capacity to marry. This occurs when the Nigerian court does not recognize the decree of annulment or dissolution, but it is recognized in the foreign country where it originates from, as well as being enforced this is known as limping marriage. . An example of this case can be seen in the case of  **Padolecchia v. Padolecchia** the husband was domiciled in Italy. He got married there in 1943 but later obtained a divorce in mexico, this decree wasn’t recognized in Italy, he went on to contract a marriage in England. He later petitioned for a nullity to his second marriage on the grounds that he was still married to his first wife since the Mexican decree wasn’t recognized in his domicile. The court held that he lacked capacity to contract the second marriage since his first marriage was still subsisting. In the case of **INDYKA V.**  **INDYKA** the house of lords came up with the test of real connection, 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 recognize divorces given to wives by the courts of their recidence wherever a real and substantial connection is shown between the petitioner and the country or territory, exercising jurisdiction. This particular case was cited in the case **agbaje v. akinnoye-agbaje.**

2.  Ever since the decision in ***Hyde*** v. ***Hyde2*** (now more than a century old)

English and Australian Courts have declined to grant matrimonial relief in

respect of a polygamous marriage. When is a marriage polygamous? Until

recently it was generally thought that the nature or character of a marriage

is immutably determined by the law of the place of ~elebration.I~n recent

years it has been conceded that the character of a marriage may be changed

from polygamous to monogamous. In cases where such a mutation was

recognised as in ***Cheni*** v. ***CheniP*** the change was in accordance with the law

of the place of celebration itself.

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 his employment there. The learned judge (Gumming-Bruce, J.) decided

that by the middle of 1961 he had acquired a domicile of choice in England.

The wife followed and cohabited with her husband in England. In 1959 the

husband applied for British nationality and in the same year a child was

born to the parties, Shortly thereafter the wife left the matrimonial home

with the child and returned to India. In 1960 the husband obtained a British

passport, continuing to live ~ermanentlin~ England. In 1964 he began living

with a woman and a child was born of this relationship. In 1963 the husband

petitioned for divorce on the ground of desertion. The wife denied desertion

and alleged cruelty. She also alleged that the Court had no jurisdiction on the

ground that 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.