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Answers

1. Limping Marriages

Marriage, also called matrimony or wedlock, is a culturally recognized union between people, called spouses, that establishes rights and obligations between them, as well as between them and their children, and between them and their in-laws. It is the legally or formally recognized union of two people as partners in a personal relationship.

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.

Limping marriages may simply be defined as a situation whereby the parties are considered to be married in one jurisdiction and divorced in another jurisdiction. With regards to matrimonial causes, it must be pointed out that not every decree of dissolution or nullity of marriage granted abroad would be recognized in Nigeria. In other words, it is possible for a decree of nullity or dissolution to be granted in country X and yet not recognized in Nigeria as valid. This situation can therefore be referred to as limping marriage, as a result of the fact that in a country, such marriage is viewed as valid while in another, it is seen as void.

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 recognized?

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 categorize 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. Therefore, this means that, as a general principle, that if a marriage is valid according to the lex loci celebrationis, then it is good all the world over, even though it would not constitute a valid marriage in the country of the domicile of either of the spouses; conversely, if a so-called marriage is not a valid marriage according to the lex loci celebrationis, then

there is no marriage anywhere, even in a case where the same marriage, if celebrated in the place of the parties' domicile, would have been a perfectly valid marriage.

However, there are ways by which limping marriages Can Be reduced At common law, which includes:

1.) 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

2.) Favor matrimonii upholds the validity of all marriages entered into with a genuine commitment. But, as states become increasingly secular and allow the termination of marriage through no fault divorce and other less confrontational mechanisms, the policy for recognition and enforcement of foreign decrees may be changing from favor matrimonii to favor divortii (i.e. upholding the validity of the divorce wherever possible).

3.) Wherever possible, the results of any litigation should give effect to the legitimate expectations of the parties as to the validity or termination of their marriage. Most U.S. States have codified this concept with putative spouse laws. In other words, a minor flaw in the marriage ceremony should not invalidate a marriage.

4.) That the application of all rules should, wherever possible, produce predictable and appropriate outcomes. There is a clear benefit that laws should be certain and easy to administer. Courts have the benefit of expert evidence and time in which to conduct their legal analysis. But the same issues arise far more often in everyday situations where immigration officers, social welfare and tax authorities, and businesses will have to decide whether persons claiming an eligibility or a liability based on their status as a spouse are validly married. If conflict rules are obscure and complicated, this can result in real difficulties for all involved.

5.) 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.

6.) A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.” i.e. it introduces a form of proper law test of policy which could potentially lead to the application of a third state's policies which is a confusing possibility. This principle emulates from the "full faith and credit" clause of Article IV of the Constitution.

2. Mutation of Marriage

As a general rule, the English courts will not grant matrimonial relief in polygamous and potentially polygamous unions. Courts have consistently held that parties to a polygamous or a potentially polygamous union cannot seek matrimonial relief from the common law. Lord Penzance wrote in Hyde

v. Hyde: I conceive that marriage as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others. Now it is obvious that the matrimonial law of this country is adapted to the Christian marriage, and it is wholly inapplicable to polygamy. We have in England no law framed on the scale of polygamy, or adjusted to its requirements, so this court does not profess to decide upon the rights of succession or legitimacy which it might be proper to accord to the issue of the polygamous unions, nor upon the rights or obligations in relation to third persons which people living under the sanction of such unions may have created for themselves. All that is intended to be here decided is that as between each other they are not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England.

In succession and legitimacy, "marriage" has been defined so as to include polygamy, while matrimonial matters, including matrimonial relief, have traditionally followed the Hyde v. Hyde rule. As recently as 1961, the English Court of Appeal in Sowa v. Sowa observed that "if the ceremony is polygamous then it does not come within the word 'marriage' for the purposes of the Acts relating to matrimonial matters, nor do the parties to it come within the words 'wife', 'married woman' or 'husband'. In many decisions following Hyde v. Hyde, the courts have often expressed regret that an innocent but victimized party had to be denied relief only because the character of the marriage in question was polygamous.

However, commencing with an opinion tendered by Lord Maugham to the Committee of Privileges in the Sinha Peerage case, decisions developed around the principle that notwithstanding the fact that a marriage may be potentially polygamous at its inception, it could subsequently become converted or mutated into a monogamous marriage as there are however instances where the character of a marriage maybe changed from polygamous to monogamous, for the purpose of attracting the matrimonial relief available under the English common law, and this can be referred to as cases of "mutation". This is usually done by change of domicile, as whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated.

Thus, Mutation or Conversion of Marriage may simply be referred to as the process in which the character of a marriage is modified, mutated or converted 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 affect a conversion to monogamy.

Also, in the case of 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.

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