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Dear Lisa,

I am extremely sorry for causing the delay in replying to your query. I myself got extremely busy in the High Court of Pakistan having regular cases almost every day this week. Your query pertains to "POLYGAMY". An in-depth explanation on the subject matter would be useful for you to come to a conclusion taken from "Manual of Family Laws in Pakistan by Mr. M. Farani, before I answer to your queries.

Muslim marriage compared with English marriage

A Muslim marriage differs from a marriage under English Law in being a polygamous one. Under both the systems, the conception of marriage is that of a contract; but while English marriage is a monogamous during the lifetime of both the spouses, a Muslim man can marry as many as four wives at a time. A widow under English Law, as under Muslim Law, is allowed to re-marry. Both the systems recognize divorce, but the Muslim Law is more liberal, so far as the freedom of husband is concerned.

CONTRACTING OF MUSLIM MARRIAGES

(CONFLICT OF LAWS)

English marriage recognized by Muslim Law: The marriage of the parties in a case solemnized before a Registrar in England, according to the procedure laid down in the Marriage Act, 1949, and confirming to the Muslim Law requirements, would be recognized as valid under the Muslim Law. (The case is reported as PLD 1967 SC 581)

Polygamous marriages recognized by English Law. In *Baindail Vs Baindail* (1946) 1 All E.R. 342 CA, a woman domiciled in England went through a ceremony of marriage in England with a Hindu domiciled in India. She later discovered that he had a wife in India and petitioned for nullity on the ground that the marriage was bigamous and therefore void. The respondent was permitted by his *lex domicili* to practice polygamy and the first marriage was therefore clearly polygamous. Nevertheless it was held that this marriage was clearly valid by the Law of the husband's domicile and that it must be recognized as valid here. The petitioner's contention was, therefore, held to be sound and her marriage void.

WHAT MARRIAGE ARE POLYGAMOUS

Whether a marriage is to be regarded as monogamous or polygamous must be determined in the first place by the *lex loci celebrations*. If the ceremony is designed to create a monogamous union, the marriage will at its inception be monogamous; conversely, if the ceremony is designed to create a polygamous union, the marriage will at its inception be polygamous. But this does not fix its character for all times: it is certainly possible for a potentially polygamous marriage to become a monogamous, and it seems probable that an initially monogamous marriage may become polygamous. (BOMLEY, Family Law.3rd Edition.pp6-7)

FORMAL CHARACTER OF MARRIAGE DETERMINED BY LAW OF CELEBRATION.

As the initial character of the union is determined by the *lex loci celebrations*, any marriage celebrated in England must be monogamous at its inception. Consequently, if a person whose *lex domicilii* permits polygamy has already contracted a valid polygamous marriage abroad, any marriage contracted in this country during the subsistence of the first will be void by English Law even though it is valid by the *lex domicilii*. Presumably the only way in which two persons domiciled abroad can contract a valid polygamous marriage in England is to have the ceremony performed at their State's embassy. (BROMLEY, Family Law, 3rd Ed.p-9)

POLYGAMOUS MARRIAGE RECOGNISED FOR PURPOSE OF LEGITIMACY OF ISSUE.

Since legitimacy is primarily a question for the child's *lex domicilii*, the real test to be applied here is not whether English Law will recognize the validity of his parents' marriage, but whether the *lex domicilii* will regard the issue of it as legitimate. This may be important in determining whether the child may take a gift under an English will or settlement in favor of the children of one of his parents or whether he may succeed to realty in England with respect to which one of his parents has died in testate. The Privy Council has held that the offspring of a polygamous marriage are children for the purpose of the former English Statute of Distributions, and there seems to be little doubt that English Courts will follow suit. But it seems that to inherit and entitled interest a child must be legitimate within the narrowest common law sense of the term and so the child of a polygamous marriage cannot be heir. (1946) 1 All E.R. 348, H.L.

CAPACITY TO MARRY GOVERNED BY PERSONAL LAW- SUPREME COURTS VIEW.

In a recent case, the husband having already been married under the Christian Marriages Act, 1872, became a covert to Islam and married a Muslim lady. On a prosecution by a Christian wife, the husband was convicted and sentenced for bigamy under section 494 PPC by the

trial magistrate, the conversion not held bona fide. This order was upheld in appeal by the Session Judge. On a revision petition by the husband, however, the conversion was held by the High Court to be bona fide, the Court observing that no offence had been committed by the husband as Islam allowed plurality of wives. Our Supreme Court, on appeal by special leave by the wife, proceeded on the assumption that the husband's acceptance of Islam was bona fide and held that the husband could have been guilty of the offence of bigamy only if the second marriage could be said to be void by reason of its taking place during the lifetime of his first wife. In the words of S.A.Rehman,J:

“clearly, it could not be said in the present case that the second marriage of the husband was void by reason of the subsistence of the first, as validity of the second marriage had not to be adjudged under the law applicable to Christians but under the law applicable to Muslims....

The capacity to enter into the marriage bond, must determined according to the law of domicile of the party concerned, it would follow, therefore, that the validity of the marriage contracted by the respondent had to be judged in accordance with the law which governed him in the matter of marriage in this country, namely Islamic Law. Marriage being a matter of status, he was governed by his personal law in this respect. There is no provision under the Divorce Act or under the Christian Marriages Act, which Would stand in the

way of acceptance of this second marriage as valid, even if the first one performed under Christian ties subsisted. (PLD 1967 SC 334. 14 MIA 309; ILR 41 Bom.181;AIR 1919 Lah 389)

CONCLUION/OPINION

I hope the above material would in some way help you resolve your problem. I could send you the latest decision on the subject matter, if required.

Now coming back to your queries regarding the validity of the marriage of your client in Pakistan during the subsistence of the marriage at USA. This is "POLYGAMY", and under the Pakistan Law and the Islamic Law he can take as many as 4 wives simultaneously. In your case though he was a permanent Australian resident, yet he was a Muslim first and then Pakistan descendant. His marriage in the USA was also valid under the Islamic Law and during the subsistence of this marriage; his second marriage in Pakistan is also valid under the Islamic Law. Both the ceremonies are valid in Pakistan, that is to say the religious and the civil ceremony. The religious ceremony is as per our traditions and the civil ceremony is Court marriage. In both the ceremonies the Imam of the Mosque cites the sermon from the Holy Quran and then both the parties scribe their signature on the instrument in presence of several witnesses.

If you require more on this, I would provide you more details.