**A COMPARATIVE ANALYSIS OF THE CONFLICT SITUATIONS AND CHOICE OF LAWS IN THE NIGERIAN LEGAL SYSTEM AND OTHER LEGAL SYSTEMS**

**ABSTRACT**

The study provided a comparative Analysis Of The Conflict Situations And Choice Of Laws In The Nigerian Legal System And Other Legal Systems. The specific objectives were geared towards describing the operation of the legal system in cases of conflicting laws and the choie of laws considering the relevance of foreign judgement and international laws.

**GENERAL INTRODUCTION**

**1.0: INTRODUCTION**

The project looks into the problems which arise when one legal system has to deal with the legal rules of another in matters of private rights. More particularly, because the ultimate test of the recognition of foreign law is what courts do about it. This work is also concerned with how a court, sitting in one country treats a case of private litigation in which the parties, the events or the circumstances demonstrate connections with one or more legal systems foreign to the court. The issue can raise in multifarious ways. An ordinary, apparently purely domestic, case may be found to have a significant connection with a foreign legal system. A case may be so genuinely international that it would be a foreign case in any court.

In *Tapa v. Kuka*[[1]](#footnote-1), the deceased, a Nupe man died interstate in Bida, leaving a house in Lagos. The question was whether his domestic law should apply or

the law of the place where the property was located, that is, lex situs? The deceased’s personal law was applied which is the Mohammedian law, prevailing among the Nupe people. This shows that the forms of appearance of a foreign element are numerous:

* The party may be foreign by nationality or may have a foreign domicile,
* The action may concern property situated abroad,
* Or a disposition made abroad of a property situated in Nigeria.

Just as the conflict of law exists because there are differences in systems of municipal law, so there are differences in the approaches that legal systems of Nigeria and other countries take to solving problems in the conflict of laws.

**1.1: BACKGROUND TO THE STUDY**

The raison d’être of Private International Law, also known as, conflict of law is the existence in the world of a number of separate municipal systems of law–a number of separate legal units- that differ greatly from each other in the rules by which they regulate the various legal relations arising in daily life. The occasions are frequent when the courts in one country must take account of some rule of law that exists in another.

There are several possible responses which a court can make when faced with a case having foreign contacts. Firstly, and most primitively, it can treat the case as a purely domestic one and apply its own law to its resolution regardless of the foreign element.

Secondly, a court could take a view that its processes are inappropriate for a case with foreign contacts and refuse to adjudicate upon it. A court would seek to ensure that national courts took jurisdiction only when they were, in their own eyes, the appropriate forum or, at least, not an inappropriate one. The remaining possibility, and the one with which this book is concerned, is that the court recognizes that cases with foreign contacts cannot simply be turned away, and that they are special in the sense that they pose particular problems which demand serious treatment.

**1.2.0: OBJECTIVES OF STUDY**

The overall objective of this study is to examine the differences between the Nigerian domestic law and other legal systems and find solutions to the conflict problems.

Specifically, the study aims at achieving the following:

* To examine and prescribe the conditions under which the court is competent to entertain a claim.
* To examine and determine for each class of case the particular municipal system of law by reference to which the rights of the parties must be ascertained.
* To examine and specify the circumstances in which (a) a foreign judgment can be recognized as decisive of the question in dispute and
* the right vested in the judgment creditor by a foreign judgment can be enforced by an action in Nigeria.
* To shed light on the level of experience and the depth of knowledge of Nigeria and some other countries in relation to private international law and how judges apply the principles of private international law.

**1.3.0: FOCUS OF STUDY**

The main focus of this study is based on cases where there are conflict between various municipal laws, be it within of outside a sovereign State, which then results to the choosing of a particular system to govern such. Special attention will be given to the Nigerian legal system in comparison and contrast with other legal systems.

**1.4.0: SCOPE OF STUDY**

Private international law is not a separate branch of law in the same sense, as, say, the law of contract or of tort. It is all pervading. ‘It starts up unexpectedly in any court and in the midst of any process. It may be sprung like a mine in a plain common law action. In an administrative proceeding, in equity, or in a divorce case, or a bankruptcy case, in a shipping case or a matter of criminal procedure. The most trivial action of debt, the most complex case of equitable claims may suddenly be interrupted by the appearance of a knot to be untied only by a Private International Law.’[[2]](#footnote-2)

Nevertheless, Private International Law is a separate and distinct unit in the Nigerian Legal System just as much as the law of tort or of contract, but it possesses this unity, not because it deals with one particular topic but because it is always concerned with one or more of the three (3) questions, namely:

1. Jurisdiction of the Nigerian court,
2. The choice of law,
3. Recognition and enforcement of foreign judgments.

All branches of private law will be considered, but only in connection with these three matters.

**1.5.0: METHODOLOGY**

The method to be adopted for this study will be based on primary and secondary sources (materials.) They include statutes, local and foreign textbooks, law journals, law dictionaries, opinions of legal writers, law reports and reported cases from case books, available literature on internet. Also, the historical, analytical and ethical methods are employed to dive deep into the study and have a good understanding of it.

**1.6.0: LITERATURE REVIEW**

‘Conflict of law and choice situation under which this topic is based is a wide area of study. Reference will be made to several foreign and Nigerian texts by distinguished authors. Various journals will also be referred to.

CHESHIRE AND NORTH’S Private International Law[[3]](#footnote-3) states that ‘Private International Law, then, is that part of law which comes into play when the issue before the court affects some fact, event or transaction that is so closely connected with a foreign system of law as to necessitate recourse to that system.’ It has, accordingly, been described by THOMAS BATY[[4]](#footnote-4) as meaning The rules voluntarily chosen by a given State for the decision of cases which have a foreign complexion.

OBILADE A.O.[[5]](#footnote-5) on his own part believed t[[6]](#endnote-1)hat there are statutory choices of laws for determining inappropriate cases whether it is a customary law or non-customary law that governs a particular set of circumstances. He also opined that the rule of customary law is an alternative to English law and the customary law to be valid it must have passed the incompatibility test. He appreciated the fact that there is conflict between the English law and the rule of customary law and also that there may be the problem of which choice of customary to apply when two customary laws compete on the same subject matter.

According to RAYMOND SMITH, in his book, Conflict of Laws[[7]](#footnote-6), he is of the opinion that a case with obvious contacts with one country may happen to be litigated in another because the plaintiff finds some advantage in bringing an action there or the defendant cannot be made subject to the jurisdiction of the

country with which the case is, leally, most closely connected. A case may be so genuinely international that it would be a foreign case in any court.

ASEIN J.O.[[8]](#footnote-7) is of the view that there can be conflict between the rules of customary law and English law especially on marriage and succession cases. Therefore, if a person is subjected to two different laws at the same time, then, the problem is which of the rules will be applicable to the person.

**1.7.0: DEFINITION OF TERMS**

Conflict lawyers use some Latin terms which have been adopted or derived from continental writers.

Lex cause: The law which the court has determined as the governing law of the issue.

Lex domicile: The law of the country where a person is domiciled.

Lex fori: The law of the court dealing with the issue. Where a Nigerian court decides to its own law regardless of the conflict issue it applies Nigerian law as lex fori; where, however it determines upon the application of Nigerian law as a result of operating  its  choice  of law  rules,  it applies English law as lex causae.

Lex loci actus : The law of the place where an act was done.

Lex loci contractus: The law of the place where a contract was made.

Lex loci delicti : The law of the place where the wrongful act (tort) was committed

Lex loci celebrationis : The law of the place where a marriage was celebrated.

Lex solutionis : The law of the place where the contract is to be performed.

Lex patriae : The law of the nationality.

Lex propria causae: The proper law.

Lex propria delicti : The proper law of tort.

Lex situs : The law of the place where a thing is situated, particularly but not exclusively, a piece of land.

Locus regit actum : The law of the place governs the deed. An old maxim that finds its modern expression in the lex loci rules listed above.

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1. (1945) 18 NLR 5. [↑](#footnote-ref-1)
2. Frederic Harrison, ‘*Jurisprudence and the Conflict of Laws’* (Macmillan, London 1919) p.101-102. [↑](#footnote-ref-2)
3. Butterworths, 1992, 12th [↑](#footnote-ref-3)
4. *Polarized Law,*(Stevens & Haynes, London 1914) p.148. [↑](#footnote-ref-4)
5. *‘The Nigerian Legal System’ ,*(Spectrum Books Ltd ,Ibadan 2003). [↑](#footnote-ref-5)
6. [↑](#endnote-ref-1)
7. Conflict of Laws *Cavendish Publishing Limited,*1993. [↑](#footnote-ref-6)
8. *Introduction to Nigerian Legal System(*Sam Bookman Pubs Ltd, 1998). [↑](#footnote-ref-7)