ST.MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW

LLB THESIS

INTER-STATE CONFLICT OF LAWS: THE CASE OF MARRIAGE ISSUES AMONG THE FEDERAL AND THE REGIONAL STATES' FAMILY LAWS UNDER FDRE

BY: TESFAY GEBRETSADIK
ID: ELD-0970/99

ADDIS ABABA, ETHIOPIA
JULY 2010

ACKNOWLEDGEMENT

I would like to express my gratitude to Ashagre G. for his cooperation with insight full, care full and help full comment on my research paper. You were special man to the accomplishment of this research paper.

I am also pleased to extend my special gratitude to my advisor Ato Asseffa Ali, who has to the extent possible worked to the final reach of this paper.

My heartfelt thanks goes to my brothers, Berhane and his wife (Zayda) and T.Haimanot, who always make me happy and energetic every time. Both of you, you have been to me the symbol of courage and patience and love in my learning time.

My thanks also goes to my dearest friend Atsbha K. who always help me more than that I can expressed it. I never forget all the wonderful times we had.

The last but not the least, I must thank Ato Mezmur, Ato Eshetu T. and Ato Sembeta W. for their cooperation in framing the title, supporting related materials and the invaluable issues they suggested.

Thank you!

TABLE OF CONTENTS

Page

CHAPTER THREE: INTER-STATE CONFLICTING MARITAL ISSUES OF THE FAMILY LAWS IN FDRE

CONCLUSION AND RECOMMENDATIONS

BIBILIOGRAPHY
DECLARATION

INTRODUCTION

In the contemporary world, people are in a constant and continuous mobility from one state to another state both at the international level, and within a single nation. This situation allows persons of the same or different residents (domiciliaries) or nationals, as the case may be, to engage in various social and commercial intercourses in places other than the state where they have close link. No doubt, in the course of these relationships, disputes are invariably bound to arise.

Accordingly, the problem of conflict of laws exists both in the international level between the laws of two or more sovereign nations and within a single nation between laws within the confine of a Federal system. Problems concerning conflict of laws, both at the international and national level are usually addressed by conflict of law rules.

At the international level, it is obvious that every country in the world has its own system of municipal law, which may materially differ from those of others. Relations of an international character between peoples of different nations also exist as a result of commerce, friendship, war etc. Unavoidably, a controversy arises rendering the application of different laws and such situation gives rise to international conflict of laws, a subject matter that is not the domain of this paper.

Besides, to the question of choice of law and recognition of foreign judgment or award courts will also be faced with the question of jurisdiction. In other words, before a court determines or chooses the appropriate body of law, it has to ascertain whether it has jurisdiction to entertain a case having some extra-state elements.

In a Federal setup, a country consists of a number of states each with its own law, which may be different from the laws of sister-states. In this level, there is always inter-state transaction. People may have dealing in states other than their own and inevitably disputes arise between them. This situation commonly creates recurring problems as to how to choose between conflicting laws, which will be applied to decide that particular

controversy. So, in order to solve such problems of conflict of laws, each state may formulate its own conflict of laws rules.

Generally, conflict of laws rules guide courts to ascertain whether they have jurisdiction to adjudicate a case that has an extra-state element. These rules also assist courts to determine which body of laws to apply in order to resolve the controversy on a rational and a reasonable basis.

Currently, Ethiopia is a Federal state, and today there are nine Regional states forming the Federation.[*] The Federal and State governments coexist, with the power to enact laws on those matters failing under their respective jurisdictions. There is therefore, a possibility for the existence of diversity of laws in the country. Consequently, a problem of inter-state conflict of laws may possibly exist in the nation when each member state of the Federation enacts its own laws, which may be different from the laws of the inter-state entities. In this situation the court before which a case containing extra-state element is brought will be confronted with a problem as to how to choose between conflicting state laws.

Within the Federal arrangement, the problem of conflict of laws doesn't only exist between different state laws. Under the FDRE Constitution, both the Federal and State Governments are given power to enact laws on the same matter. In this situation, there is a great possibility for the occurrence of conflict of laws between Federal and State Laws enacted under the concurrent jurisdiction. For example, four of the nine regional states have their own Family laws, and the Federal one as well. But, there is no answer for the question that how can we solve problem of conflict of laws if happened between or among the laws of the Regional states within one another or with the Federal one.

The paper attempts to discuss how problems of inter–state conflict of laws under the current five family laws in FDRE should be dealt with and recommend some solutions by which such problems can be resolved. An essential focus of the research is based on the problems on recognition of marriages that are celebrated out side of the regional state and related issues. The research paper consists of three chapters and conclusion

[*] The FDRE Constitution Art.46 (1) and 47 (1)

with some recommendations. Chapter one deals with literature review. In this chapter definition, historical backgrounds, theories, and issues of conflict of laws will be assessed. Inter-state conflict of laws and the way how some Federal states like USA and Nigeria have addressed the problem of conflict of laws will also be discussed under chapter two. The third chapter devoted to analyze the inter-state conflicting marital issues of the Family Laws in the FDRE. Finally, based on the findings of the research, conclusion and remarks and recommendations are followed.

CHAPTER I

AN OVERVIEW OF CONFLICT OF LAWS

1.1 Definitions of Conflict of Laws

The term Conflict of Laws is usually used interchangeably with private international law,[1] while United States, Canada, other continental legal system countries, and in the present time, England use the term conflict of laws. The name private international law is in common use in Europe.[2] In this regard Collier states that:

> *In common law legal systems, conflict of laws, firstly, is concerned with determining whether the proposed forum has jurisdiction to adjudicate the case at hand and is the appropriate venue for dealing with the dispute; and, secondly, with determining which of the competing state's laws are to be applied to resolve the dispute. It also deals with the enforcement of foreign judgment. And thirdly, it deals with recognition of foreign judgment.*[3]

In civil law legal systems, conflict of laws is defined as a branch of the internal legal system dealing with the determination of which state law is applicable to situations crossing over the borders of one particular state and involving a "foreign element".[4]

In defining the term conflict of laws, many writers usually use the same approach of definition adopted in the Black's Law Dictionary which defines it as:

> *conflict of law is that branch of jurisprudence arising from the diversity of laws of different nations, states or jurisdictions, in their application to rights and remedies which reconciles the inconsistency or decides which law or system is to govern the particular case, or settles the degree of force to be accorded to the law of another jurisdiction (the acts or rights in question having arisen under it) either where the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point.*[5]

Another writer on his part defines it as: **"**…conflict of laws is that part of municipal law which only comes in to play when a dispute has a connection of some kind with one or more foreign legal systems. It is designed to regulate disputes of a private nature". [6]

---

[1] Collier J.G.,2004, Conflict of Laws ,3rd ed, Cambridge University Press,. P.5.
[2] Ibid
[3] Ibid
[4] Eugene F. Scoles and Peter Hay, 1992,Conflict of Laws(2nd ed);Horn Book Series.(St.Paul, Minni, West Publishing Co.)P.1
[5] Black Henry Campbell, 1968, Black's Law Dictionary, (6th ed), (St. Poul, Minnis; West Publishing Co.)
[6] Mayss Abla, 1999, Principles of Conflict of Laws,(3rd ed.) London. Sydney; Cavendish Publishing Limited, P.2

Robert Allen Sedler in his book of Conflict of Laws also defines the term conflict of laws as: "Conflict of Law is that body of law that determines whether the forum will give effect to the laws of another state where the case that is adjudicating contains a foreign element." [7]

Chi-Chung also defines the term as:

> *…branch of law that aspires to provide solutions to international or inter-state legal disputes between persons or entities other than countries or state as such. A dispute is considered international or interstate if one or more of its constituent elements are connected with more than one country or state*. [8]

From the different definitions presented above, conflict of laws can be understood as a body of laws that deals with disputes that implicate the laws of more than one country or state because some of their constituent elements are connected with more than one jurisdiction; which comes into operation whenever we are confronted by legal problems which have a foreign element.[9]

Generally, conflict of laws can be defined as a rule, which applies to cases arising from private nature with two or more legal units. It is a body of rules, which applies to a case that contains an extra-state element.[10] For a certain case to have a foreign element either the events giving rise to litigation should, totally or partially, occur in the place other than the forum or one of the litigants should be a national or domiciliary of another state. For the purpose of private international law or conflict of laws, a state is also defined as: "a geographic portion of the earth's surface having an independent system of law."[11]

By the same token, in a federation there are several constituent states each, *mutantis mutandis,* having their own separate and independent system of laws.[12] Accordingly, each

[7] Robert Allen Sedller, 1965,The Conflict of Laws in Ethiopia, Haileselssie-I University, Faculty of Law, p.3..
[8] Chung-Chi, 2008, Conflict of Laws Rules between China and Taiwan and their Significance; St.John's Journal of Legal Commentary, vol.22: 3; Chung Publications P.583
[9] Michael Free Man, 2006, Conflict of Laws: External Program, University of London, P.6.
[10] Conflict of Laws: The three Parts of Conflict of Laws.,Jurisdiction.,Choice of Law.,Recognition and Enforcement of Judgement, Law.jrank.org/…/Conflict-Laws.html;(p.1.) retrived on 16 April 2010)
[11] Supra 7, p3
[12] Symeonides Symeon C., 2006,The American Choice-of-Law Revolution: Past, Present and Future, Vol.4, Martinus Nijhoff Publishers, P.5

component part of federal state could be a state as any other foreign state.[13] So, conflict of laws is not the only phenomenon that comes into existence at international level between two sovereign states; it has also a municipal character, as there exists inter-state conflict problems between two or more federated states in a federal plane.[14]

1.2. Historical Background of Conflict of Laws

Conflict of laws refers to the rules governing the choice of law, the rules by which the court in which the case is being tried (the forum) decides, whether or not to determine one or more of the issues in the case in accordance with the law of a foreign state.[15] Whenever the case contains foreign element, there is a potential conflict of laws problem.[16] Thus, because of the presence of a foreign element, the court may refuse to apply its own law and may look to the law of another state to adjudicate the case or may apply its own law without looking any others'. Where each court would apply its own law by rejecting the diversity, it is true that to expect the courts of other states may also be expected to give the same response over such cases. But, where there is a foreign element in the case, a just result may demand that the court takes account of this foreign element to the extent of applying the law of another state.[17] The failure to do so might result not only in injustice to the foreign party, but also on its own national who may have relied upon the foreign law.[18]As a result, there may not be trade relation nor have any contract with other states. Therefore, the situation being as an alarm demands to see the cases towards nationals abroad, towards fairness to the parties, and towards intercourse with neighbours and other states. Consequently, presence of foreign elements requires different treatment of the case; courts look to apply the law of another state. This period became the first step in the development of the conflict of laws begun with different positions accorded to foreigners involved in litigation.[19] .

An early private international law was established in classical Islamic law and jurisprudence as a result of the vast Muslim conquests and maritime explorations during the

[13] Conflict of Laws, 1964, "American Jurisprudence 2nd", (vol.16 ,2nded.) Jurisprudence Publishers, Inc. p.6
[14] Supra12, P.3
[15] Supra 7, p3
[16] Ibid
[17] Id P.7.
[18] Ibid
[19] Id.P.7.

early Middle Ages giving rise to various conflicts of laws.[20] Islamic jurists also developed and elaborate rules for private international law regarding issues such as contracts and property, family relations and child custody, legal procedure and jurisdiction, religious conversion, and the return of aliens to an enemy country from the Muslim world.[21] The religious laws and courts of other religions, including Christianity, Judaism and Hinduism, were also usually accommodated in classical Islamic law, as exemplified in Islamic Spain, Islamic India, and the Ottoman Empire.[22]

The conflict of laws began to emerge in the early part of the thirteenth century in Italy.[23] As Majister Aldericus, "father of the conflict of laws", developed the proposition, in certain cases that the court might apply the law of another state.[24] He suggested that whenever a foreign element was present, the court should look to both the law of the forum and the law of the place with which the case was connected.[25] He proposed that where there is a conflict of laws, in such a case the judge should apply the "more effective and useful law".[26] Then states may follow different approaches on application of such principles. Each nation has formulated its rules as to governing personal law in light of its own governmental interest.[27] Because interest analysts advocate that choice of law should advance state policies behind their laws and each state thinks its laws are better in general.[28] The originator of interest analysis, Brainard Currie, argued that the forum always should apply its own law when it is 'interested' in the outcome of the dispute.[29] If no state has an interest in the outcome, the forum should still apply its own law because it is cheaper than applying foreign law. Foreign law should be applied only when the foreign state is interested and the forum state is disinterested, offered an alternative approach.[30] Consequently, courts should determine which states have an interest in applying their laws to the dispute. In other words in the face of a conflict, courts minimize social costs, as those costs are perceived by the individual interested state.[31]

---

[20] G.Weeramantry,Judge Christopher.(1997),Justice Without Frontiers: Furthering Human Rights, Brill Publishers, p.138,
[21] Ibid
[22] Ibid
[23] Supra 7, p.8.
[24] Ibid
[25] Ibid
[26] Ibid
[27] Ibid
[28] O'Hara Errin Ann and Ribstein Lary E., 1999, Conflict of Laws and Choice of Law, George Mason University School of Law, P.9
[29] Ibid
[30] Ibid
[31] Ibid

According to Robert A. Sedller:

> *The first instances of conflict of laws with regard to inter-state in the Western legal tradition can be traced back to Greek law. In Greek cities of the Helenic period ,ancient Greeks dealt straightforwardly with multistate problems, but did not create choice-of-law rules. Leading solutions varied between the creations of courts for international cases, special courts for foreigners,*[32]

or application of local law, on the grounds that it was equally available to citizens of all states.[33]

More significant developments can be traced to Roman law.[34] Roman civil law (*jus civile*), taken as part of the right of Roman citizens, being inapplicable to non-citizens, where special tribunals had jurisdiction to deal with multistate cases.[35] The officers of these specialized tribunals, judges for foreigners were known as the *praetor peregrini*.[36] The *Praetor peregrini* did not select a jurisdiction whose rules of law should apply. Instead, they applied, "the principle of law to all nations", which is known as *jus gentium* rather than '*jus civile'*.[37] The *jus gentium* was a flexible and loosely-defined body of law based on international norms, and then the *praetor peregrini* essentially created new substantive law for each case. Today, this is called a substantive solution to the choice-of-law issue.[38] The period that, the period of introducing separate courts for cases involving foreigners may be considered as the initial set up in the development of the conflict of laws.[39]

The modern conflict of laws is generally considered to have begun in Northern Italy during the late middle Ages.[40] The need to adjudicate issues involving commercial transactions between traders belonging to different cities led to the development of the theory of *statuta*, whereby certain city laws would be considered as *statuta personalia* following the person whereby it may act, other city laws would be considered as *statuta realia*, resulting in application of the law of the city.[41]

---

[32] Id.p.7.
[33] Juenger Frederich K., 1993, Choice of Law and Multi State Justice, Martinus Nijhoff,Kluwer, pp.5-7
[34] Id 8-10
[35] Supra 7, p.7
[36] Ibid
[37] Ibid
[38] Supra 33, pp.5-7
[39] Supra 7, p.7.
[40] G.C. Cheshire, 1947, Private International Law, (3rd ed) (London; Oxford University Press,) P.3.
[41] Ibid

In the nineteenth Century, private international law was thought of as regulating trans-boarder relationships between individuals in the sense of old 'law merchant' or (*lex mercatoria*).[42] Nowadays, conflict of laws is that decentralized among a plurality of sovereign or autonomous authorities. [43] This is based on the notion that People may or may not live only within the boundaries of a single state or territorial units. Persons may live in different states or regional entities of one sovereign state for many reasons such as marriage, job and trade transaction.[44] Following different contractual affiliations, disputes will arise and that becomes a cause to involve more than one state in it.[45] At the time, the legal order is composed of a number of sovereign states, tries to integrate the diversity of laws of which it is composed.[46] It is strictly attached with an existence of foreign element or minimum of a case related to an outsider of a regional state.[47] These elements may be the events that give rise to dispute, location of its object, or nationality, citizenship, domicile, residence, or other affiliation of the parties.[48] Hence, 'a presence of a foreign element required different treatment of the case that whether to apply its own law or to apply the law of another state.[49]

An emergence of the modern field of conflict of laws in the United States was also during the 19th century with the publishing of Joseph Story's treatise on the Conflict of Laws in 1834. Story's work had a great influence on the subsequent development of the field in England such as those written by A.V. Dicey.[50] Much of the English law then became the basis for conflict of laws for most commonwealth countries. However, in the U.S., Story's work fell out of fashion in the mid-20th century.[51] Traditional conflict of law rules were widely perceived as too rigid and unresponsive to the needs of a highly mobile society undergoing the Second Industrial Revolution.[52] Thus, they were replaced with a number of approaches, of which the most important is the governmental interests analysis pioneered by law professor Brainerd Currie in a landmark series of essays.[53] As a result of

[42] Malanczuk Peter,1997, Akehurst's Modern Introduction to International Law,(7th ed). Routledge, p.72.
[43] Supra 7, p..6.
[44] Supra 12, P.6
[45] Supra 6, P..5.
[46] Id.6
[47] Ibid
[48]Supra 10
[49] Supra.6, P.7
[50]Supra 1,, P.5.
[51] Supra 12,, P.10.
[52] Ibid
[53]Id,.P.13 and 22.

Currie's work, the rules for conflict of laws in the United States have diverged significantly from the rules in use at the international level.[54]

In English law, compared with other branches of laws, a systematic body of rules on the conflict of laws only come in to being at a comparatively late stage[55] It can be said with some confidence that the subject begun to burgeon in the later part of the nineteenth century, which at the same time saw the development (after 1857) of family law and the coming in to existence of a coherent body of commercial law.[56] Because of this feature, some questions remain unanswered. Until fairly recently, the English conflict of laws was characterized by lack of legislative interference; practically all its rules where judge made. Indeed, a considerable amount of the English conflict of laws is now statutory. The statute include the Family law Act 1986 and many others, those relevant to the conflict of laws.[57]

As I have tried to show the development, from the legal practice of many countries such as United States and English laws, we can understand that conflict of laws varies as the state structure is varied. Conflict of Laws in unitary states is different from the countries under Federal arrangement. Unitary States are confronted with conflict of laws that having international status. Because, a conflict of laws which occurred from is between the laws of the internationally recognized, sovereign, countries and have the same nature wherever. Conflict of Laws that born in a country which follows a Federal arrangement, has tripled character. Since the country comprises several territorial units, it embraces more than two constitutionally sovereign nation States (constituent states) under the Federal State with their legislative power. As far as the states are sovereign and empowered to legislation, an existence of conflict of laws in the legal diversity is unavoidable. Consequently, conflict between the laws of the constituents each other, conflict between the constituents and the Federal Law, and conflict between the country law with another country law is certain.[58]

Conflict of laws exists in every private matter but not in criminal, Constitutional, and administrative cases even if there is an involvement of foreign element.[59] It concerned with all of civil and commercial laws. It has its own distinguishing characteristics. The

[54] Ibid.
[55] Supra 1, P.8.
[56] Ibid.
[57] Ibid
[58] Supra 12
[59] Id. P.4.

distinguishing characteristics of Conflict of laws are, it concerns itself with spatial problems of law, it devoid of material content, its function ends after indicating the substantive law that should be applied.[60] It is also concerned with family law, including marriage and divorce, guardian and the relationship of parent and child.[61] The parts such as a question of formal validity of marriage are called 'legal categories' and the place of celebration and others are called 'connecting factors.'[62]

1.3 Theories of Conflict of Laws

Conflict of laws may perhaps be analyzed more revealingly, however, if one looks at the way the various theories approach the subject. Over the centuries, approaches have been developed to dealing with the classic conflict of laws issues: choice of law, choice of jurisdiction and recognition. [63] Accordingly, there are many theories of conflict of laws, recognizing that frequently one theory is a reaction against another.[64] The different theories as to the nature of the conflict of laws are the following.

1.3.1 The Comity Theory

This theory is known as a version of the territoriality, approach of Huber and the other Dutch writers, and an American jurist, Joseph Story, and is developed in 19th century.[65] The three propositions in the territoriality approaches where: Every state possesses absolute sovereignty, sole right of sovereignty within its own territory and may bind all persons or property located there; No sovereign can give laws beyond its boundaries; Consequently, whatever force the laws of one state have beyond its borders depends on the comity given to those laws by another state.[66] To put it in a clear manner, that a foreign law shall not operate by its own force, without having comity; only operated for a purpose of a particular case.[67] The greatest weakness of this theory is that he does not tell us which law should be applied where all the events have occurred within a single state even where comity is given.[68]

---

[60] Supra 10, p.3
[61] Supra 6, P.209
[62] Supra 12, P.3
[63] Tetley William, 1999, A Canadian Looks at American Conflict of Laws Theory and Practice, especially in light of the American Legal and Social System, McGill University, P. 1
[64] Supra 7, p.13
[65] Stumberg, Cases on Conflicts (2nd ed.); Quoted by Robert Allen Sedller,1965,The Conflict of Laws in Ethiopia , Haileselssie-I University, Faculty of Law p.3.
[66] Supra 7, p.13
[67] Ibid
[68] Cheatham, 1945, American Theories of Conflict of Laws: their Role and Utility, Harvard Law Review, P.372.

1.3.2 Nationality Theory

An Italian writer, called Mancini in the middle of the nineteenth century, developed nationality theory and his essential thesis is that

> *Law is personal, and not territorial, that is made for a given people rather than for a given territory; the laws of their nationality bind nationals, wherever they may reside; which do not bind foreigners within the territory, even though they may be domiciled there and act there*.[69]

Mancini would also permit the parties to choose the applicable law in matters such as contracts as in the comity theory, foreign law operates for purposes of decision in the particular case.[70] The doctrine was having limited influence even in one country and its main significance lies in the areas logically governed by personal law, status and family relations; to be governed by national law of the party rather than by the law of his domicile.[71]

1.3.3 The Location of Legal Relations Theory:

The theory was developed by a German writer, Savigny, in the middle of 19th century and his position was that conflicts' law is a part of international law and its rules were imposed by the international common law of nations.[72] He gives the guidance to which law should be applied. The method of selecting the proper law was to discover for each legal relation that legal territory to which the legal relation by its peculiar nature belonged to significant factual relationships included the domicile of a person, the *situs* of a thing, the place where a legal transaction occurred, and the location of a court.[73]

1.3.4 The Rights Theory:

This theory is with three sub theories, which differ with each other on the question that how the forum applies foreign law.

1.3.4.1 Vested Rights Theory

The vested right theory was developed by Dicey in England. According to Dicey's theory, that is the duty to recognize rights arising under foreign law was not dependent on comity, with its expectation of reciprocity, but rather on the mere fact that such rights had been

[69] Yntema, 1953, The Historic Bases of Private International Law, 2 American Journal of Comparative Law P.309
[70] Supra 7, p.14
[71] Supra 69
[72] Ibid
[73] Supra 65, P.4

validly created under the foreign law of their place of origin.[74] Another must recognize rights once created by one state. A forum must look to its own principles of substantive law. There is only one state that has the power to create a right and will be enforcing it.[75]

1.3.4.2 Highly Homologous Rights Theory

The theory was developed by judge Learned in US and professor Morris in England.[76] It believed that unlike the advocates of the vested rights theory, that the forum cannot enforce rights created by foreign law; there can be no law but the law of the forum.[77]

1.3.4.3 Territoriality Theory:

It was developed by professor Niboyet in France. Territoriality theory is that which has basically no difference in result than the other two "rights" theories. He recognizes that universal rules of the conflict of laws are not possible of attainments[78] and in this respect differs some want from the exponents of the vested rights theory.[79] His solution lies in the application of the territorial principle- the state whose law should be applied in a given case is the state territorially interested in the outcome.[80]

1.3.5 *Lex fori* and Governmental Interests:

This theory was proposed by the German and French writers, Kahn and Bartin, respectively, who discovered the problem in the 1680s.[81] It has been a prevailing theory in the continent. According to this theory, the court should characterize the issue in accordance with the categories of its own domestic law, and foreign rules of law in accordance with nearest analogy in the same law.[82] And it has been developed by professor Ehrenzweig who believed that the basic law is the law of the forum and a foreign law should be used only to fill gap in the law. He also advocates that conflict of laws must be policy oriented and the court should not bound by absolute rules without considering the practical result.[83]

---

[74] Rebel Ernest 1958, the Conflict of Laws: A Comparative Study, (vol., 1 2ND Ed.), University of Michigan, p 67
[75] Ibid
[76] Dicey Albert V and Morris C.G. J, 1958, conflict of laws, vol.12, 6th ed. Sweet and Maxwell Ltd.
[77] Supra 68 P.385
[78] Niboyet , 1952, Territoriality and Universal Recognition of Rules of Conflict of Laws, 65, Harvard Law Review, P.582 (English Version)
[79] Id 584
[80] Supra 7, P.22.
[81] Supra 1 P.15
[82] Id. P9-10
[83] Ibid

1.3.6 The Local Law Theory:

Professor Walter Wheeler Cook has developed it in US.[84] This theory was Cook's attempt to explain the seemingly paradoxical application of foreign law by the forum, and to reconcile such application with the forum's sovereignty. His argument was that in adjudicating cases with foreign element that would otherwise governed by foreign law.[85] It did have the effect of placing the *lex fori*.[86]

1.4 Issues of Conflict of Laws

There are three complex issues, particularly since there are many different countries or nation states with different legal systems. In essence, whenever conflict of laws arises, the key issues are: whose courts have jurisdiction, whose laws are to be used, and enforcement of the judgment.[87] Conflict of Laws or Private International Law rule by itself does not resolve Conflict of Laws in a particular case.[88] The rules embodied there cannot give a direct solution to the controversy of the case. It is rather the body of rules, which provides some rules of law that enables the courts to decide cases having some extra-state elements on a rational and reasonably consistent basis.[89] It does not go any further than providing guidelines in the determination of jurisdiction, to the appropriate governing law, and recognition and enforcement of foreign judgment.

G.C Cheshire on his part states it as follows:

> *Private international law doesn't solve a case. It must be observed that the function of private international law is complete when it has chosen the appropriate system of law. Its rules don't furnish a direct solution of the dispute and it has been said by a French writer that this department of law resembles the inquiry office at rail way station where a passenger may learn the plat form at which his train starts, It is rather an instrument which only gives response to question of jurisdiction and choice of law whether the court has jurisdiction to entertain a case before it and if it has the power to adjudicate, which system of law should it apply to the case.*[90]

[84] Supra 12 P.11
[85] Ibid
[86] Ibid
[87] Supra 9, P.5.
[88] David F. Cavers, 1965, The Choice of Law Process, Ann Arvor; The University of Michigan Press, p.22
[89] Ibid
[90] Supra 40, P.10.

There are, however, cases, which frequently come before a court that contain some foreign elements. The parties may be of different nationality or the cause or actions may, totally or partially, take place in a foreign country, or related to sister states in a sovereign country.[91] When such case is brought to a court, a judge must find a solution as to whether the court has to accept or refuse the case for adjudication and if it accepts the judge also has to choose the appropriate body of law based on which the rights of the parties are to be determined.[92]

In such issues, a court must find a solution for two questions. The first one relates to a question of jurisdiction; whether a court before which a case containing a foreign element is brought has the power to entertain the case, and the second question relates to choice of law, where once the court proves that it has jurisdiction to adjudicate the case, it has to determine as to which system of law is applicable to the case.[93]

Accordingly, there must be existed definite principles and rules of conflict of laws, which guide the court to answer the questions raised above. Consequently, many countries have developed a codified set of rules, which is called conflict of laws rules, for enabling their courts to rule on the above mentioned issues or do have scattered provisions in their different substantive laws.[94]

Every modern legal system has its own rules of private law, and they differ from one to another as much as any other brunch of domestic law. If the parties cannot resolve their differences amicably, then three main types of questions may arise in such cases.[95] These are jurisdiction, choice of laws, and recognition and enforcement of foreign judgments.

1.4.1. Jurisdiction

The term jurisdiction takes different meaning depending on the context in which it is used. In the judicial context, jurisdiction broadly refers to the power of a court to entertain a case. According to Black's Law Dictionary, jurisdiction is:

> *… a term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide a matter in controversy, and presupposes the existence of the duly constituted court with control over the subject matter*

[91] Morris J.H.C, 1967, Conflict of Laws,(8th ed.) ,London; Stevens & Sons Limited, P.3
[92] Ibid
[93] Supra 10
[94] Id.3
[95] Supra 6, P.2.

> *and the parties. Jurisdiction defines the power of a court to require in to facts, apply the law, make decision and declare judgments* [96]

Generally, there are three elements of jurisdiction: Local jurisdiction, Material jurisdiction, and judicial jurisdiction.[97] Material jurisdiction rules basically resolve the question which level of court (Supreme Court, high court, or first instance court) should exercise jurisdiction over certain specific maters.[98] On the other hand, local jurisdiction refers to the specific area within a state, in which a case is to be tried.[99]

The other element of jurisdiction, which is the one subject of the discussion under this paper, is judicial jurisdiction. Judicial jurisdiction refers to the power of the court of a particular state to render a judgment binding on individual or his property.[100] Obviously, a state's power to assert jurisdiction may not be challenged if a case is entirely between and among its residents or domiciliaries, and for a claim or controversy that arose locally. No other state can claim to have an interest in resolving such cases, which are purely domestic to one state.[101] The issue of judicial jurisdiction is, however, bound to arise when a case involves non-domestic elements that one of the parties, at least, is a resident /domiciliary of another state, or that the cause of action has arisen elsewhere.[102]

Common law and civil Law countries established in their conflict rules, different conditions under which their courts may have power to adjudicate a case containing an extra state element. Common Law countries can exercise jurisdiction based on the mere fact that the defendant has been served with process within the territory of the state.[103]

In other words, the rule at Common Law is that a court exercise jurisdiction and thereby entertains an action provided that it is possible to serve the defendant with a will of summons within the state's territory. This concept of jurisdiction is not, however, free from criticism.[104] The main criticism against this concept of jurisdiction is that it results in a number of conflict problems as the forum, without having any connection with the

---

[96] Supra 5
[97] Robert Allen Sedler, 1968, Ethiopian Civil Procedure, Faculty of Law: Haileselassie-I University, P.19.
[98] Id.P.27
[99] Id.P.33
[100] Id.P.19
[101] Siegle David D., 1994, Conflicts in a Nutshell,, 2nd ed
[102] Id, P.2 and PP.31-32
[103] Supra 7, p.47.
[104] Ibid

defendant and the causes of action, exercises jurisdiction based solely on the fact that the defendant is stayed there.[105]

In civil law countries on the other hand, courts usually assume jurisdiction whenever either the defendant is the citizen of the forum state or domiciled there even though the events giving rise to litigation took place out of the forum or when the events giving rise to litigation took place within the territory of the forum state. [106] This concept of jurisdiction in the civil law countries has a significant contact with the defendant or the events, which are the subject matter of the suit.

1.4.2. Choice of Law

Choice of law is the question which has to be determined that what system of law should be applied to the dispute; that is, to determine the particular municipal system of law, by reference to which the right and liabilities of the parties to the dispute must be ascertained.[107] It deals with the question of whether the merits of the dispute will be resolved under the substantive law of the state of adjudication or under the law of another state,[108] which may have a relevant relation or connecting factor, in one way or another, to the case at hand.

As I tried to discuss earlier, every conflict of laws rules specifies the system of law based on which the specific issue can be decided. Once the court decides that it can exercises jurisdiction, the second fundamental question normally presented to the judge would be the question of which system of municipal law to apply to a case at hand.

When the law of the forum is selected as the source of the rule of decision, the judge will simply apply this law to the case before him.[109] However, the case may not be as simple as so when foreign law is chosen as the source of the rule of decision. Whenever a foreign law is taken as the appropriate and governing law, continental and common law courts have usually different attitude towards the treatment of this law.[110] Most common law legal systems treat foreign law as a question of fact like any other facts of the case and the party relying on such law has to plead and prove it in accordance with the rule of

[105] Ibid
[106] Ibid
[107] Supra 6,P.1
[108] Ibid
[109] Supra 10
[110] Supra 4,, P.418.

evidence.[111] In those legal systems, a party who relies on foreign law has the obligation to use all the necessary evidence and to prove the law in accordance with the rules of evidence including examination and cross-examination of witnesses.[112]

On the other hand, most continental legal systems treat foreign law as a question of law, and according to this approach, it is usually the court alone that, without the help of the parties, must ascertain the foreign law, but in some instances it may need a sort of assistance from the parties.[113]

The process, which is that to choose an applicable law, choice of laws can be classified in to three categories. These are known as characterization, *renvoi*, and public policy.

a) Characterization: The process by which the disputed question is assigned to its correct legal category is known as characterization.[114] It also defined as a process by which a court determines whether the question submitted to it for solution relates to contract, property, tort or any other fields or to a matter of substance or procedure in order to refer to the appropriate system of law.[115]

Characterization includes the following three things. The first one relates to the determination of whether, for instance, the disputed question before a court is a tort or contract issue and this process is known as subject matter characterization.[116] The second part relates to the use and definition of connecting factors.[117]

The selection of the governing law is conditioned by what is called a connecting factor.[118] The connecting factors employed by the conflict of laws are not very numerous. They include the personal law (domicile, habitual residence, and very rarely, nationality), the place where the transaction takes place, the place of performance, the intention of the parties, the *situs*, and the place where the court (forum) is sitting.[119] In attempting to determine what law governs such situations, courts seek guidance from connecting factors, that is the factors which link to an event, a transaction or a person to

[111] Ibid
[112] Idp.419.
[113] Id, P.421.
[114] Supra 40, P.59.
[115] Supra 13, P.8.
[116] Supra 4, P.52.
[117] Ibid
[118] Supra 9, P.5.
[119] Supra 4, P.12.

a country.[120] Some examples of the factors which are commonly employ in Latin terms are: *Lex loci contructus*: the law of the place where the contract was made; *Lex loci celebrationis*: the law of the place where the marriage was celebrated; *Lex domicili*: the law of the place where a person is domiciled; *Lex patriae*: the law of the national; *Lex fori*: the law of the forum, that is, the internal law of the court in which a case is tried etc.

These connecting factors have no independent significance. They only provide the means to choose the appropriate law, but they cannot determine that choice. For instance, succession to immoveable property is governed by the *lex situs*. Thus, the connecting factor is clearly *lex situs*, but this is part and parcel of the rule itself.[121]

The connecting factors determining one's personal law varies from one legal system to another. For instance, common law legal systems generally adopt 'domicile' as a relevant connecting factor, civil law legal systems adopt 'nationality', and Islamic law assigns personal law by reference to 'religion'. But, connecting factors have no independent significance. They only provide the means to choose the appropriate law, but they cannot determine that choice.[122] They are nearly determined by the law of the forum. The last part relates to the extent of the application of the law that has already been selected.[123]

The writer believes, understand, even though the connecting factors have their advantage and disadvantages relatively, the *lex loci* is the nearest one and necessary to determine the formal validity of marriage, which is the best requirement to recognize. Because, formal validity of marriage concerns issues such as the form of ceremony (which may be civil or religious), registration of marriage, witnesses, time and place of celebration, and the presence of parties, etc. As to the essential validity of marriage, which relates to such matters as consanguinity, affinity, bigamy, lack of age and lack of consent are also have preferable and believable access to a place of celebration. Therefore, the fundamental point in this area is that since a place of celebration is seemingly has a preferability to recognition of marriage celebrated in a sister state; and then the *lex loci celebrationis* may be more advisable in such situation. The *lex-domicili* also may become necessary regarding to resolve a question of recognition of marriage, where the domicile and the place of celebration are the same.

[120] Supra 6, P.3
[121] Ibid
[122] Ibid
[123] Ibid

b) Renvoi: The term *renvoi* is a French word, which literally means "refer back" or "sending before the court."[124] A problem of *renvoi* arises whenever a case containing a foreign element is referred by the conflict of laws rule of the forum to the "law" of a foreign country and whenever this reference is to be the entire law of the foreign state including its conflict rule involving the possibility that the conflict rule of this foreign state refers the question back to the law of the forum or forward to the law of a third country.

The doctrine of *renvoi* appears in two different forms. The question here is how to solve the problem of the *renvoi*. One way is to 'reject' the *renvoi*. The forum looks only to the substantive law of the locus. This is the approach taken by most American courts.[125]This is the simplest way to solve the problem, but the result is that the forum decides the case differently than it would be by the court of the state whose law the forum holds should govern.[126]

Another approach is to 'accept' the *renvoi*. The forum accepts the reference back to its internal law and applies it. The approach has the same defect that the 'rejection' approach has. The forum's automatic acceptance of the *renvoi* ignores the fact that in the particular case the locus might not decide to apply the law of the forum, if when considering that case it discovered that the locus to which it looked would also look to it. [127]

c) Public Policy: It is generally very difficult to define the term public policy and no attempt has so far been made by any state to define the concept in its legislations.[128] However, it is generally observed that the public policy of a state can be reflected in its constitution, statute, and in the decisions of courts.[129]The doctrine of public policy in private international law means that in certain circumstances the foreign law ordinary applicable will not be applied in the case because to do so would violate the public policy of the forum.[130]Even though the forum's choice of law rule refers to the law of another

[124] Sandang Angel L**.,** 1962, "Renvoi as a Situation and as a Solution"; Vol.13, The University of Sancarlos Law Review, P.13.
[125] Stumberg George W., 1963, Conflict of Laws, (3rd ed.) p.10
[126] Supra 7, p.156
[127] Ibid
[128] Ibrahim Idris Ibrahim, April 1990, Materials for the Study of Private International Law in Ethiopia; Faculty of Law, Addis Ababa University, P.146 (Unpublished).
[129] Ibid
[130]Supra7, P.158.

state as the appropriate governing law, the forum will never give effect to this law where to do so would be repugnant to its public policy. So, for a foreign law to be recognized and applied, it must not be against the moral code or against the public policy of the state where it sought to be applied.

Another question that is to be answered for the purpose of choosing a governing law is procedural matter. The general rule is that the law of the forum determines all questions of 'procedure'. But, whether or not a matter is analytically one of procedure should not be the test; the test should be whether the matter in question materially affects the outcome.[131]

1.4.3. Recognition and Enforcement of Foreign Judgments

The third issue, which is dealt with by conflict of laws is that of recognition and enforcement of foreign judgment. Recognition and enforcement of judgment deals with the requirements under which the courts of one state will recognize and enforce a judgment rendered in another state.[132] Each state specifies, in its conflict rules, those conditions under which a foreign judgment may be recognized and enforced. Foreign judgment would be enforced by a competent court if it satisfies those requirements prescribed by the local law for that purpose.[133] Even if these requirements or conditions usually differ from country to country, one can make a general conclusion that in most countries a foreign judgment cannot be enforced if a foreign court, which rendered the judgment, had no jurisdiction of the judgment, violates the local notion as to public policy or good morals.[134] Even as between member states of a federation, a judgment rendered by one state can't be enforced by a sister-sate on grounds of lack of jurisdiction, or manifest fraud.[135] So, the fact that states are under a union or federation doesn't mean that a judgment made by the court of one state will be automatically recognized and enforced by the court of sister state. For such judgment to be enforced, it has to satisfy details of those requirements prescribed by a sister-state. Generally, the requirement taken by most countries for the purpose of enforcement of foreign judgment relate almost exclusively to the question of whether the foreign court had jurisdiction and do not relate

[131] Id .154
[132] Supra 10
[133] Culp Maurice S., 1956,Selecting. Readings on Conflict of Laws, (West Publishing Company), p375
[134] Stumberg George W., Quoted by Maurice S. Culp, 1956, " Selecting. Readings on Conflict of Laws," (West Publishing Company), P.375
[135] Id p.347

to the question of whether the foreign court applied the appropriate system of law.[136] In other words, if the foreign court had jurisdiction, its judgment will be enforced in another state, save the case of fraud, despite the fact that the foreign court has failed to apply the appropriate system of law.

To sum up, private international law or conflict of laws is part of the domestic law of each state and it is concerned with questions of choice of law, jurisdiction, and recognition and enforcement of foreign judgment.

[136]R.H.Graveson, , 1969, Conflict of Laws (6th ed) London; Sweet and Max Well Ltd. P.20

CHAPTER II

INTER-STATE CONFLICT OF LAWS

2.1 Inter-State Conflict of Laws in General

The term interstate conflict of laws is the sum of two different and independent terms, (interstate and conflict of laws). Inter–state means that between two or more states or residents.[137] And Interstate laws deal with the rules and principles used to determine controversies between residents of different states.[138] According to Black's Law Dictionary, conflict of laws is defined as "a difference between the laws of different states or countries in a case in which a transaction to two or more jurisdictions." [139]

Regions or states that combine unity with legal diversity provide a fertile soil for the evolution of the conflict of laws[140]. All nations (and, in the case of federal states, political subdivisions of such states within the scope of their jurisdiction) are equal and independent. Each of them may therefore legislate freely as sovereign entities. Conflict of laws, as a result of plurality, or legal diversity, may face to non-recognition of judgments rendered by courts. The American model which has played an effective role in American conflict of laws especially as regards the recognition of sister states' judgments is governed by the principle known as 'Full Faith and Credit Clause'.[141] This requires states to respect the laws of other states atleast to the extent of having a principled basis for refusing or to follow the law in a particular case.[142]

Some early 'Full Faith and Credit' cases involving fraternal benefit associations held that the association's formation under state law or charter must apply in order to ensure that a single legal regime applies to all association members.[143] However, given the limited objectives of the Full Faith and Credit Clause discussed above, it is unlikely that this authority would be broadly applied today to compel enforcement of choice of law clauses.[144] At most, these cases might justify applying a single rule, such as the law of one

[137] Supra 5
[138] Ibid
[139] Ibid
[140] Supra 6, P.1
[141] The Constitution of the United States of America, Art.IV Sec.1
[142] Supra 28, P.35
[143] Id, P.652.
[144] Ibid

state that has overwhelming contacts with the transaction even if this is not the law the parties selected.[145]

Based on the above definition, we can say that Inter-state comes forward when there is a federal system. It is a conflict of laws where persons of different states in a federal system where a case before a court of one of the states.[146] In federal settings the inter-state situation is problematic. It is a question of what if the rule of another state brings a problem of similarity?, Normally, Inter-state conflict of laws is a conflict that occurred in States with different jurisdictions under a federal set up.[147]

The law that governs the relation with each other as states as a legal resolving mechanism is also known as Inter-state conflict law.[148] Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under a Convention. A state within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply a Convention to conflicts solely between the laws of such units.

In the US, systems of conflict of laws are parts of state law subject to some important federal constitutional treaty, and statutory constraints and these conflict rules play dual rules both in inter –state (i.e. between the constituents states) and international (i.e. between one constituent state of a federation and another foreign nation) situations.[149] Generally, the states are free to formulate their own system of conflict of laws only subject to the Full Faith and Credit Clause and other constitutional restrictions.

Interstate law is the law governing the relation between the members of a federation of states with each other as states. It is distinguished from international private law because its subjects are not sovereigns but belonged to a governed body of a super ordinate. In interstate conflict, a foreign element and a foreign state means a non-regional state element.[150] It is also that a State may or may not a coincide with a country in the sense of the conflict of laws;[151] unitary states, where their law is the same throughout the state, are

[145] Ibid
[146] Supra 6, P.7
[147] Supra 12, P.3.
[148] Id. P.5.
[149] Supra 4, p.1.
[150] Decey & Morris; 1993, the Conflict of Laws (12th ed, vol.2) Sweet & Maxwell Limited, P.3.
[151] Id P.28

countries in this sense but composite states like the UK, the US, Australia and Canada are not.[152] The expression of "foreign judgments" is also mean that judgments or awards given or made outside the regional state.[153] Inter–state law is an intermediary conception between the law of confederations and the law of nations.[154] As opposed to federal state law it is characterized by having for its object no relation of supremacy and subordination between the federation and its members, but relation of coordination between the members of the federal state. Interstate law is above all of importance for federations or states- that is ,in the contemporary political world, only for federal states to resolve the conflict of laws problems derived from their nature of arrangement.

As far as private international law is concerned, the several states though united under the same sovereign authority and governed by one supreme federal constitution, are in the same relation as other foreign countries.[155] Great majority of questions of private international law are, therefore, subject to the same rules when they arise between two federating states of the union as when they arise between two foreign countries.[156] Strictly speaking, the legal system of one constituent state in a federation is as much as a foreign system of law as legal system of another country.[157] This doesn't, however, mean that the relationship between two constituent states in a federation is absolutely the same as the relationship between two foreign countries. In their relation one to another, the constituent states enjoy under a federal constitution, a special status and the special relationships they are enjoyed under their supreme federal constitution surely affect their respective system of conflict of laws.[158] Inter-state conflict problems, in the United States involve constitutional issues under the" Full Faith and Credit" Clause, the "Commerce Clause" and the "Immunity and Privileges" Clause of the Federal Constitution. [159]

2.2 Inter-State Conflict of Laws in Federal System (the experience)

2.2.1. The US Experience

United States is one of the federal nations, which has experience with the problem of diversity of laws in a federal system. The great divide in the American legal landscape is

[152] Ibid
[153] Ibid
[154] H.G. Crocker, (Jan.1909), The American Journal of International Law, (Vol.3,No-1),The University of Toronto, pp.6298 (Retrieved from JSTOR in 10 April 2010)
[155] Supra 13, p.6.
[156] Ibid
[157] I.O Agbede, 1973, "Conflict of Law in a Federal State", Nigerian Law Journal, vol. 7, P.51.
[158] Ibid
[159] Ibid

the state-federal line and it derives from the Constitution, pursuant to which the federal government was created in 1789 to form a more perfect union of the existing states.[160] Today there are fifty states and Washington DC (A federal district under the authority of Congress). Each of these states has their own written Constitution. The principle of separation of power is embodied in the various state constitutions establishing the state's legislative, as the law making body, the Government as chief executive, and a court system to exercise a judicial power. [161]

The Federal Government and state Government co-exist now and under the United States Constitution, a broad range of power is given to the Federal Government and all the remaining is reserved to state governments.[162] At the federal level, the congress, executive departments, and administrative agencies are generating laws and regulations.[163] At the same time, the legislative, executive departments and administrative agencies of each constituent state are generating laws and regulations.[164] Thus, there are multiple sources of American law:

> *In the United States, conflict of laws encompasses at least three categories of conflict, the first of which is international and the second two, international. In descending order of frequency, these are (1) conflicts between the laws of states of the United States (interstate conflicts); (2) conflicts between the law of a state of the United States and the law of a foreign country; and (3) conflicts between American federal law and the law of a foreign country. Conflicts of the first two categories are governed by state law, and largely by the same principles, subject only to mild restraints imposed by federal law, primarily constitutional law. The third category is governed by federal law that has to a great extent developed out of state law principles and continues to be influenced by it. A fourth category of conflicts, discussed elsewhere, concerns "vertical conflicts" between federal law and state law.*[165]

These conflicts are governed and resolved under principles of federalism, which may or may not coincide with general-conflicts principles.[166]

---

[160] Daniel John Meador, 1991, American Courts: Universal Book Trade,(St. Paul Minnesota; West Publishing Company) P.1
[161] Id, P. 997.
[162] Id P.38
[163] Ibid
[164] Ibid
[165] Supra 10
[166] Supra 12, P.3.

Disputes invariably arise by the mobility and fluidity of the American society across the several states, the regional or nationwide character of business and other human activities.[167] The transactions, which are the subject matter of the disputes, involve persons and events touching more than one state and such situations produce difficult questions regarding the proper state's law to apply.[168] So, for the purpose of solving the inter-state conflict of laws problems, each member has established its own choice of law rule as part of its domestic law, albeit subject to some important Federal constitutional constraints.[169] All these rules or approaches select the law of particular state with some connection to the controversy and the courts apply that law to resolve the dispute.[170]

As we have seen above, the states are free to adopt their own choice of law rules as they choose, only subject to the restriction imposed by Full Faith and Credit Clause, Due process Clause, the Privileges and Immunities Clause and the Equal protection Clause of the United States Constitution. So, the Federal law directs or limits the action of a state court in choosing the applicable law, and in enforcing foreign cause of action. When compared with the privileges and immunities and equal protection clauses, the Full Faith and Credit and Due process Clauses have greater importance on this matter.

The control of conflict of laws by federal law is conferred in most explicit terms by the 'Full Faith and Credit Clause' of the United States Constitution.[171] The provision of Article IV, Section 1 of the US Constitution provides in part that: "Full Faith and Credit Clause shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." This requires states to respect the laws of other states at least to the extent of having a principled basis for refusing to the law in a particular case.[172]

Under the full faith and credit clause one state can't refuse to give effect to the laws of a sister state, and thus, the freedom exercised under the ancient doctrine of comity has been greatly abolished as between the various states and territories of the United States.[173] The

[167] Supra 4, P.2
[168] Ibid
[169] Ibid
[170] Ibid
[171] Supra 141
[172] Id, Sec.2
[173] Constitutional Law**,** 1964,**"**American Jurisprudence 2d" (Vol.16. 2nd ed.) Jurisprudence Publishers, Inc., P.990

power of each state to determine the limits or the jurisdiction of its courts and the character of the controversies, which shall be heard therein, is restricted by the full faith and credit clause.[174] Therefore, many which have been raindly acquired under the laws of one state are recognized and protected in another state despite the fact that such laws differ from the laws and policy of the forum. [175]

Full faith and credit play great role in resolving conflict of laws problems in the American legal systems. It offers a wide basis for federal control of state conflict of laws rules. By requiring each state to respect the sovereignty of sister- states in a federal context, the clause balances the conflicting state interests and chooses the interest that will prevail.[176] This does not, however, mean that conflict rules are the creature of full faith and credit. The clause doesn't determine the nature and content of rules of conflict of laws; rather it is relevant only to process of formulating conflict rules. In one case Vinson J. stated in giving the opinion of the court that:

> *The states are free to adopt such rules of conflict of laws as they choose, subject to the full faith and credit clause and other constitutional restrictions. The full faith and credit clause doesn't compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister-states*.[177]

From the above, one can understand that instead of creating any rule of conflict of laws the mandate permits it.

The Full Faith and Credit Clause provides a source of jurisdiction for the United States supreme courts and whenever there exists conflict between the statutes of two or more states, the court plays a significant role in delimiting and reconciling the operation of these conflicting state statutes.[178] The court is given power to review the decisions of the state courts in the field of conflict of laws and uses the full faith and credit to examine what limits the federal constitution imposes on choice of law decisions by the states.[179] As

[174] Supra 141, Art.IV
[175] Supra 173, P.997.
[176] Supra 4, P.78 .
[177] F.M. Fisher, 1975, "Due Process and Full Faith and Credit Clause", Federal Law Review, (Vol.7, No 1), P. 175.
[178] Id.P.176
[179] Ibid

it was pointed out earlier, the full faith and credit clause compels each state to give recognition to the laws of a sister-state.

In more recent cases, the Supreme Court has used the test of "Substantial contact" for the purpose of determining the applicable state's law.[180] So, the law of a state, which has no substantial connection with the multi-state transaction, can't be used.[181] In this regard, the full faith and credit prevents a state from denying the application of the law of some other state, which has a sufficient relationship with the multi-state transaction in question.[182] Thus, one can claim unconstitutionality when the forum denies redress to him on the ground that the forum recognizes the rights validly acquired under the laws of another state.[183]

Generally, the extension of federal control over conflict of laws might bring substantial advantages by requiring all of the state legal system to adopt identical and objective choice of law rules.[184] By the adoption of uniform choice of law rule, inter-state conflict of laws problems would be resolved. The fact that state courts in an increasing number of cases follow the restatement of conflict of laws is an indication of progress in the creation of a single conflict of laws rule for all courts.[185]

Another important clause related to Conflict of Laws is Due process clause. This clause plays a very useful function in preserving personal and property rights against the arbitrary action of public officials. In its fourteenth amendment declares that, no state has power to take away all rights, which have been validly acquired by a citizen under existing law except by the due process of law.[186]

The equal protection clause of the fourteenth amendment to the federal constitution also commands each not to "deny to any person within its jurisdiction the equal protection of the laws."[187] The Constitution of United States in its privileges and immunity clause

[180] Supra 4, P.79
[181] Ibid
[182] Supra 141, Art.IV
[183] Supra 141
[184] Supra 12, P.10.
[185] Schoch Magdalene, 1942, "Conflict of Laws in a Federal State: The Experience of Switzerland", Harvard Law Review, Vol.55, P.776. .
[186] Supra 173, P.958.
[187] Supra 4, P.78

provides that "the citizens of each shall be entitled to all privileges and immunities of the citizens of the several states."[188]

2.2.2. Nigerian Experience

Before 1954, Nigeria was governed as a unitary state but has become a federal one in 1954.[189] The significant characteristic of the Nigerian Federation is that, unlike the federal government of USA, Australia and Switzerland, which have been formed by formerly independent states coming together under a Federal union, Federal government in Nigeria has been introduced by devolution as the country has moved from a unitary state to a federal state.[190]

Under the Nigerian Constitution, the legislative and the executive powers are divided between the two sets of governments: the Central and Regional governments.[191] The Central government has been given powers to legislate over certain enumerated items while all the residual legislative powers are reserved for the regions, and both the central and regional governments are also empowered to legislate over some concurrent list**.**[192] Nowadays, in the Federation of Nigeria there co-exists twelve constituent states each having its own independent legal system and the tendency is often an increasing divergence between the state laws.[193] As a result there exists Inter-state conflict of laws problem in the federation.[194] So conflict of laws arises in Nigeria not only at the international level but also equally at the domestic level with in the federal context.[195]

As tried to state above, Inter-State conflict of laws problem arises due to the existence of diversity of state laws in a Federation. Because of this unavoidable problem, each constituent state of the union establishes its own choice of law rules by which the appropriate state law can be chosen and applied to an issue involving more than one state. Inter-state conflict of laws problem in Nigeria is, to some extent, minimized by certain factors.[196]

---

[188] Supra 141
[189] Newbauze B.O., 1963, The Machinery of Justice in Nigeria; London: Butterworth, P.81..
[190] Ibid
[191] Assefa Fiseha, 2006, Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study, (Revised ed); the Netherlands, University of Utrecht, , P 170..
[192] Supra 157, P.50.
[193] Id P.50-51
[194] Supra 191, P 170.
[195] Ibid
[196] Supra 157, P.51.

> *In the first place, judges of all state courts apply the same common law of England without even taking into account the relationship between this law and the social conditions of the particular state or the Nigerian society at large. Secondly, the vast majority of Nigerians prefer to take their cases to the customary court and majority of cases, usually, those matters relating to personal relations, are governed by customary law. Thirdly, the country has established an appellate court for the whole of the Federation, and thus the existence of this court invariably ensures, to some extent, uniformity of law in the country.*[197]

Generally, these three factors play a significant role in reducing, to some extent, the problem arising from the diversity of the state laws in Nigeria.

Like a case in many federations, in Nigeria, the various constituent states enjoy, both under the constitution and the federal statute, special status in their relation to one another.[198] The laws enacted by each constituent state in Nigeria must within the confine of the republican constitution, which entitles every citizen of Nigeria the right to a fair hearing and an equal treatment without any discrimination on grounds of his/her racial origin or religious affiliation**.**[199] Under the Federal statute, it has also been declared that a court of one state should recognize and enforce the judgment of a court of another sister-state, under certain conditions, as if it were a judgment of that other state.[200] In addition to this, states are, even though they are free to adopt any conflict of laws rules they choose, expected to have conflict rules that must operate within a very closely knit economic, social and political entity.[201]

Generally, all the above arrangements surely affect choice of law rules of the states and therefore, in Nigeria, Inter-state conflict of laws rules are, to some extent, separate and distinct from rules of private international law.

2.3 Inter-State conflict of Laws with regard to family matters

Conflict of laws is also concerned with family law, including marriage and divorce, guardian and the relationship of parents and child.[202] So, regarding family matters, there is

[197] Ibid
[198] Supra 191, P 173.
[199] Supra 157, P.52.
[200] Ibid
[201] Ibid
[202] Supra 1, P.62

much room for diversity of opinion and practice among nations.[203] The jurisprudence of different nations contain almost infinitely diversified regulations up on the subject of the mutual obligations and duties of husband and wife, their mutual rights and interests in the property belonging to, or acquired by each, during the existence of the marriages.[204]

Marriage is a contract by which a man and a woman express their consent to create the relationship of husband and wife.[205] This contract, however, fundamentally is different from a commercial contract.[206] The defining it as a mere contract by itself is questionable as it may raise the question of polygamous right, or the right of same-sex marriage, or others based on an agreement of the parties.

Therefore, marriage is one of the matters that exposed to the problem of conflict of laws. Recognition of a validity of marriage, consanguinity or affinity relationship between the couples, capacity to marry (Age) and other effects of marriage of couples legally celebrated in their domiciliary state may be conflicting issues in another state. Mayss extends the clarification as:

> *Most legal systems impose restrictions on marriage between parties who are related. The precise prohibited degree of relationship, however, varies from one legal system to another. Moreover, in some systems the prohibitions are not only restricted to consanguinity, but also to affinity. This will, therefore, often result in couples within the prohibited degrees to visit another country temporarily, where they are validly married without such restrictions*[207].

For instance, with regard to its lawfulness Story noted that:

> *In some states, marriages are not only deemed in civil sense lawful; but are deemed in a moral, religions sense law full. In some states also marriage deemed lawful but out deemed in religions, and moral sense and vice versa. Marriages are not naturally unlawful, but prohibited by the law of one state and not of another. To take an example, in some state marriage between a man and his deceased wife's sister is law full; but it is not so in some states. Such marriage celebrated here becomes inconvenient there. In addition*

[203] Story J., (1834), Commentaries on the Conflict of Laws: Foreign and Domestic, (3rd ed.) Cambridge; Maxwell, Stevens and Sons. p.200
[204] Id, P.235
[205] Supra 6, P.209
[206] Ibid
[207] Ibid

> *marriage is not the matter of rights and obligations of coupled individuals; it confers the status of legitimacy on children born in wedlock, with all the consequential rights, obligations, and privileges thence arising; it gives rise to relation of consanguinity and affinity. As every nation has a right to prescribe rules for the government of all persons and property within its own territorial limits, its own law in a case of conflict out to prevail. No other nation will recognize such incidents or effects, when they are incompatible with its own policy.*[208]

Marriage is not treated as a mere contract between the parties[209] because it is a nuclear part of a family, its validity is also an essential question of marriage to alive or not. As we have seen it herein above, some critical questions of conflict of laws, such as, by whom law should be recognized a validity of marriage? The place, where the actual marriage is celebrated or, where the parties are domiciled, if the marriage is celebrated elsewhere?, Therefore, the same as any other contract faced to conflict of laws; marriage is also exposed to such problems.[210] As a result, it demands special treatment as relied on conflict of laws.[211]

Principally, conflict of laws rules relating to family matters are the constantly challenged ones.[212] The reason is that it is the area of private international law which concerns the essential and fundamental structure of any society-family. It reflects a political sociological and religious peculiarity of each state. National legislation is increasingly affected by the internationalization of everyday life, resulting in the growth of international conflicts in this area. Furthermore, conflict of laws in family matters is of potential interest to everybody. Nowadays, we travel abroad, marry abroad, and we live in multi-national, multi faith and multi racial societies. Even the notion of marriage is subject to deferent definitions, Private international law refused to recognize the existence of polygamous marriage. Today, it struggles with new issues such as homo sexual and the capacity of trans-sexual to marry.[213] Consequently, conflict of laws in general, specially marriage, is faced with highly complicated situations.

---

[208] Supra 203, pp.209-216
[209] Id. p.302
[210] Ibid
[211] Ibid
[212] Chuach Jason & Kaczorowska Alina,2006, Conflict of Laws: , Q&A Series (2nd ed.) Cavendish Publishing limited, p.243. .
[213] Ibid

A question of formal validity of marriage is the one and crucial point that is highly exposed to conflict of laws. Because, as a general rule, this is determined by the law of the place of celebration, but subject to some exceptions.[214] As the rule governs a validity of marriage, it also governs a nullity of marriage depending on the particular issues of validity. Regarding to this, it is a well established principle that the formal validity of marriage depends entirely on the law of the place where the ceremony is performed (*lex loci celebrationis*).[215] Thus, the basic rules is that if a marriage does not comply with the formality of the *lex loci celebrationis*, it will not be valid in that country nor anywhere else. Because 'no rule of the conflict of laws is clearer or longer established than the one which lays down that these matters are regulated by the *lex loci celebrationis*, the law of the place where the ceremony takes place, which reflects the rule locus *regit actum.*'[216]

A marriage satisfying the contracting state's requirements will usually be held valid everywhere.[217] Many states provide by statute that a marriage that is valid where contracted shall be valid within the forum state. This "place of celebration" rule is then subject to a number of exceptions, most of which are narrowly construed. The most common exception to the "place of celebration" rule is for marriages deemed to contrary to the forum's strong public policy.[218] For example, in USA several states such as Connecticut, Idaho, Illinois, Kansas, Missouri etc. provide an exception to this general rule by declaring out-of-state marriages void if against the state's public policy or if entered in to with the intent to evade the law of the state.[219] This exception applies only where another state's law violates "some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common wealth."[220] Section 283 of the Restatement (second) of law provides:

> *(1) The validity of marriage will be determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the marriage under the principles stated in Section 6.*

[214] Supra 6, P.209.
[215] Ibid P.224
[216] Supra 1, P.295
[217] The Restatement of the Law Second Conflict of Laws,(1971), The American Law Institute, Section .107
[218] Smith Ailson M., CRS Report for Congress; Same-Sex Marriage Legal Issues, Updated December 5,2005 (P.6.) Received through the CRS Web on 24 April.2010
[219] Ibid
[220] Ibid

> *(2) 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 in the spouses and the marriage at the time of the marriage.* [221]

According to Pennegar court on such issues, because of the important interests implicated, there is "a rule of universal recognition in all civilized countries that is general a marriage valid where celebrated is valid elsewhere."[222] However, there are exceptions to the rule: (1)"marriages which are deemed contrary to the law of nature, as generally recognized in Christian countries," and (2)"marriage which the local law-making power has declared shall not be allowed any validity, either in express terms or by necessary implication."[223]

In considering what law shall govern the validity of marriage where a marriage contracted (celebrated) in their home state, and the couples come for some reason or another and become domiciliary in a sister state, in all legal systems it is agreed that the substantive validity of marriage is determined by the personal law of the parties.[224]

Where a legal marriage is being denied in other state, even under one federal sovereign state, great majority of couples, married in their home state may bound to return to their home to gain a resolution of full legal recognition of their unions at a time of dispute arises. The legal grounds for gaining nationwide recognition of marriages are constitution and statutory laws.[225]

In the American experience, to give a guarantee for such problems, emanate from the federal nature, the Constitution of the United States of America specifically declares in Article IV Section 1 what citizens have come to expect, that since America is one country, they do not shed their rights as they cross a state border. This is why the Constitution states:

> *Full faith and credit shall be given in each state to the public Acts, Records, and Judicial proceedings of every other state. And the congress may by*

[221] Supra 217, Section 283
[222] Mark Strasser, 2009, "Interstate Recognition of Marriage and the Right to Travel", express O P.6. (http://works.bepress.com/mark_strasser/15)
[223] Ibid
[224] Supra 7, p.60.
[225] Wolfson Evan, (March 20 1996),The Law of Interstate Marriage Recognition; A Summary of Legal Issues, United Church of Christ, p. 1-2

> *general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved and the effect thereof.* [226]

In other words, the establishment of the full faith and credit clause requires all states to recognize a marriage legally contracted in another state would yield the most sweeping possible outcome, and, as a constitutional holding, the one most immune from legislative tempering. Statute of Hawaii on its part regards a marriage certificate issued pursuant to its marriage law to be prima facie evidence of validly contracted marriage.[227]

In fact, it is settled law that final judgments are entitled to full faith credit, regardless of other states, public policies, provided the issuing state had jurisdiction over the parties and the subject matter.[228] The full faith and credit clause has rarely been used by courts to validate marriages are not "legal judgment."[229] As CRS Report:

> *Questions concerning the validity of an out-of state marriage are generally resolved without reference to the full faith credit clause. In the legal sense, confers certain benefits. Validity entering the contract creates the marital status; the duties and benefits attached by a state are incidents of the status. As such, the general tendency, based on comity rather than on compulsion under the full faith and credit clause, is to recognize marriages contracted in other states.*[230]

From the above, one can understand that marriage is not a judgment and just the rules of recognition are just principles, developed by courts over time, that try to promote "comity" and respect for the laws and actions of sister states and to minimize the disruption to individual expectations caused by states' conflicting marriage laws.

Therefore, the courts of all other states must also recognize the certificate as prima facie evidence for a validly contracted marriage.[231] This is on the belief that the strong unifying principle embodied in the full faith and credit clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states.[232]

---

[226] Supra 141
[227] Haw.Rev.stat."527-1 and 572-13(c) (1985), Quoted in Supra note 225 P 5
[228] Supra 217, Section 107.
[229] Supra 218, P.6
[230] Ibid
[231] Supra 225, P.5
[232] Id.p.6

Marriage qualifies for recognition under each prong of the full faith and credit clause, partaking as it does of each of the three categories, "Public acts" (creation of marriage), "Records" (certification of a marriage), "judicial proceedings" (celebration of a marriage).[233] Citizens have to get "marriage visa" stamped when they cross a state border, if not they (their parents) are simultaneously married and unmarried in different reaches of the country. Such situation is simply untenable, both in terms of federalism and the meaning and expectations around marriage, itself a fundamental right.[234] Just like a corporate charter or even, divorce, states must respect marriages lawfully celebrated in other states.[235] The other states must give those Acts, Records, or proceedings the same effect they would have at home.[236]

From the above discussion, one can understand that where the treatment of such situations is become far from an appropriate way, the problem may become tangible obstacle in the path of interstate mobility and burdens. On this ground, married couples that wished to travel in or to another state as domiciliary, would have to choose between their marriage and their right to travel because of recognition of their marriage become endangered. The right to marry and to have that marriage recognized is of fundamental importance, both in and of themselves.[237] Opposing recognition of marriage celebrated and from sister states are advocating a position that could do great damage not only to the individual couples and children involved, but also to the institution of marriage, family relationship, and the links and mobility vital to federal union.

[233] Supra 141
[234] Supra 225, P.4
[235] Id p.2-3
[236] Id.P6
[237] Supra 141, Sec.2

CHAPTER III
INTERSTATE CONFLICTING MARITAL ISSUES OF THE FAMILY LAWS IN FDRE

3.1 Introduction

Marriage is an institution; in the maintenance of which in its purity, the public is deeply interested as for it is the foundation of the society without which there would be neither civilization nor progress.[238] It has also importance under the law because marriage confers a variety of rights, privileges, and obligations that are unique to the institution of marriage. Thus, marriage, as creating the most important relation in life, as is more to do with the morals and civilization of people than any other institution, has always been subject to the control and investigation of the legislature.[239]

By reaffirming the fundamental characters of the right to marry, it is not to suggest that every state's regulations, which relates to the incidents of or prerequisites for marriage, must be subjected to rigorous scrutiny.[240] It is also to be observed that, while marriage is often termed by text writers and in decision of courts as a civil contract, it is generally to indicate that it must be founded upon the agreement of the parties. Hence, the consent of the parties is of course essential to its existence; but when the contract to marry is executed by the marriage, a relation between the parties is created which they cannot change simply. Thus, the relation once formed, the law steps in and holds the parties to various obligations and rights.

Because marriage is a long continuing relationship, there normally is a need that, its existence is subject to regulation by a given law without occasion for repeated redetermination of the validity by another.[241] This is because, human mobility from country to country or region to region should not solely depend on the outcome of expectations they had with regard to the fate of their marriage concluded somewhere else.

This situation may imply, by the fact that marriage laws vary between the regional states, and because the societies of these regional states are mobile, the states must have means by which to determine whether to recognize a marriage entered into in another regional

[238] Supra 203, P.195
[239] Ibid
[240] Ibid
[241] Ibid.197

state jurisdiction; thus affording the parties certainty and predictability[242]. In doing so, the regional states must weigh their forum and the complaining couples regional state forum policies, or, the regional states' connections to the parties involved, and the justified expectation of the parties. Hence, a forum state should recognize and enforce the judgment of another regional state, in contravention of its own marriage law or policy with very few exceptions.

This implies that, where the marriage policy of one regional state comes into conflict with that of another, the necessity of some accommodation of the conflicting interest of the two regional states is more apparent. If so, conflict is to be resolved by compelling the courts of each regional state to subordinate its own marriage law to those of the other, but by apprising the regional governmental interests of each jurisdiction, choice of law and recognition of marriage celebrated out of the region, and award decision according to their weight.[243]

An implication of marriage validation judgment is that, marriage will be found to be valid if there is any reasonable basis for doing so.[244] The validation rule confirms the parties' expectations, providing stability in an area where stability is very important, and it avoids the potentially hideous problems that would arise if the legality of a marriage varied from one regional state to the other.[245]

A constitutional power of legislations including family law, which is allocated to the states separately from the federal, is exercised only on countries under a federal arrangement[246]. Thus, by establishing and preserving a federal union, the constitution creates the condition for the occurrence of conflict of laws, of both the vertical and horizontal conflicts. Horizontal conflicts are those that occur between or among the law of the states in a federal country.[247]

In 1994, Ethiopia has adopted a Federal Constitution for the first time and has moved from a unitary to a federal state structure.[248] The 1994 FDRE Constitution, which is the supreme law of the land,[249] comprises a dual form of government: the Federal government

[242] Supra 12, P.5
[243] Supra 203, P.282
[244]Supra 150, p.642
[245] Ibid
[246] Supra 12, P.4
[247] Ibid.
[248] The Constitution of Federal Democratic Republic of Ethiopia Proclamation No.1/1995, Art.1
[249] Id. Art.9 (1)

and the State members.[250] Currently, there are nine member states,[251] self-governing Federal Capital City, Addis Ababa,[252] and a Federal Enclave City, Dire Dawa[253] forming federation in the FDRE. Like any other Federal Constitution, the division of power is made in FDRE Constitution[254]. The Federal government and the States have legislative, executive and judicial powers.[255] The State council has the power of legislation on matters falling under state jurisdiction, to enact and execute the state constitution and other laws always.[256]

Each Member State can have its own system of law, which could differ from the laws of another sister-state. Under these circumstances, there may exist diversity of state laws in the country and this inter-state conflict of laws becomes unavoidable. We should bear in mind that, inter-states conflict of laws problem always arises, within the federal context, when there are diversity of state laws differing one from the other.[257]

In most countries, the issues of conflict of laws such as the problem of judicial jurisdiction, choice of law, and recognition of foreign judgment and enforcement are treated as questions of conflict of laws.[258] In our country, however, there are no specific rules, which govern such problems. Of course, there are some provisions, under the establishment of Federal Courts Proclamation No. 25/1996, which deal with the issue of civil jurisdiction, but they are far from being comprehensive.[259] There is, however, an attempt to address the problem of issues of conflict of laws in a federal state structure with regard to persons permanently residing in different states. The law provides that: "Federal courts shall have jurisdiction over the suit between persons permanently residing in different regions".[260] Whoever reads this provision would ultimately arrives on the conclusion that the above provision only deals with the diversity jurisdiction, not on matters dealing with conflict of laws that includes family matters.

[250] Id. Art.50 (1)
[251] Id. Art.47 (1)
[252] Id Art.49 (1&2)
[253] The House of Federation, (January 2009) The Power of Referral of State Legislative Powers; Particular Emphasis on Private International Law and Arbitration LawsP.3 (Draft)
[254] Supra 248,at Article 50(8), 52 and 55
[255] Id. Art.50 (2)
[256] Id. Art.50 (5)
[257] Supra 6, P.1
[258] Supra 97,P.20
[259] See Federal Courts Proclamation, Proclamation No.25/ 1996, Federal Negarit Gazetta, year 2, No. 13
[260] Id, Art.5 (2)

Based on the given judicial power discussed above, practically there are five different independent Family Laws in Ethiopia. One is "The Federal Revised Family Law",[261] seemingly having the status of state law[262], which is applicable to the administrations that are directly accountable to the Federal Government [263] that is the two Federal Cities (Addis Ababa[264] and Dire Dawa), and the four are that of States' "The Revised Family Law of the Tigray National Regional State",[265] The Family Law of the Oromiya National Regional State,[266] "The Family Law of the Amhara National Regional State",[267] and "The Family Law of the South Nation Nationalities and Peoples Regional State", herein after SNNP Family Law [268] which declare inapplicability of the provisions of the Ethiopian Civil Code 1957 that govern the specific issue of persons and family matters by their Family Laws.[269]

When we refer to those laws, they have some conflicting issues especially on the issues of validity of marriage which are celebrated in the sister states, out of the regional state. For the purpose of this research a marriage celebrated in the sister state mean that couples who married legally in their nation state but become domiciliary in the forum state for some reason. Seemingly, parties may return back from the place of celebration to their original domicile after concluding their marriage abroad for various personal reasons, and rarely may be to escape from the legal prohibition by their nation state, current domicile law, such as immoral marriage or highly contravened to the public policy of the forum.[270]

As it has been tried to discuss herein above, the conflicting marital issues may be categorized into three. These are jurisdiction over the marriage, choice of a governing law (applicable law), and the presence of recognition of marriage celebrated in sister states.

[261] Supra 248, Art.52(2) (b)
[262] It is said because; enacting family laws is not among the lists, which enumerate the power of HPR under art.55 of the FDRE Constitution. Thus, by virtue of art.62 (1), it is the power of the state. Consequently, HPR cannot come up with a "Federal Family Law, even this "Federal Family Law" is applicable only in Addis Ababa and Dire Dawa.
[263] The Preamble of the Federal Revised Family Code, the Federal Negarit Gazetta, Proclamation No.213/2000
[264] Supra 248, Art.49(3)
[265] The Revised Family Code of the Tigray National Regional State, Mekalih Tigray, Proclamation No.116/2007
[266] The Family Law the Oromiya National Regional State, Megelete Oromiya (extra ordinary issue) Proclamation No.68/2003 & 83/2004
[267] The Family Code of the Amhara National Regional State, Zikre-Hig, Proclamation No.79/2003
[268] The Family Code of the South Nation Nationalities and Peoples Regional State, Debub Nearit Gazetta, Proclamation No.75/2004
[269] Supra notes 263, Art.319(1), 265 Art.246, 266 Art.336(1), 267 Art.330(1), and 268 Art.334
[270] Supra 225, pp.2-4

3.2 Jurisdiction

Naturally, jurisdiction is the power of a court or judge to entertain an action, petition or other proceedings.[271] This means when a proceeding in respect of certain subject matter is brought in one court that a court is said to have jurisdiction. Jurisdiction also signifies the district or geographical limits within which the judgment or orders of a court can be enforced or executed. For the purposes of this paper the term jurisdiction will be discussed vis-a–vis the current federal and regional states of Ethiopia jurisdictional problems and questions. It is well known that whenever a dispute between parties arises and crosses over borders of the federal and regional states, involving more than one regional state territory, questions arise as to where proceeding should or can be brought (which state's court has jurisdiction to hear the dispute). Moreover, the law of jurisdiction contains three uniform principles in case of inter-state disputes: firstly, a court has jurisdiction to hear a dispute that concerns domestic property and related issues; second, a court that has no jurisdiction should decline it, and thirdly, selection of whose law is to govern the disputes.[272]

Having the above general jurisdictional definitions and rules in principle when we look into the deep problems and conflicts of laws regarding jurisdictions over marriages celebrated in the regional and federal states, the next issue is to see how the Family Laws of the Federal and different regional states approach the matter at hand.

If we see the approach of the Revised Family Law of the Tigray National Regional State, and the Family Law of the Amhara National Regional State, the first thing that can be observed from both is that; they do not say anything about marriage celebrated out of their territory (there is no provision of jurisdictional choice to solve the dispute arise or would be arising) between the parties. But the Oromiya National Regional State Family Law clearly addresses the issue: that the parties interest resolving jurisdictional right is proclaimed for authorized courts of Oromiya National Regional State as per the law of every marriage celebrated in the regional state:

> *Where dispute arise between the couples who conclude their marriage out of the region in accordance with the provision of Art.23(1) of the Law and are*

[271] Supra 10, P.2
[272] Supra 76, P.4.

> *domiciliary in the region at the time, the jurisdiction is lay on the authorized courts of the regional state.*[273]

This article just mentioned above conveys the meaning that as far as the marriage is concluded according to the rules as provided by the law, the courts of Oromiya authorized in the region do have a power to entertain the issue without any problem of contest from someone saying the court does not have a power to entertain the case. The only condition the law attaches to the power is the fact that whether the marriage is concluded according to the law it prescribes and the fact that the disputants are domiciliary of the region. Thus, impliedly the law is ruling out the power of the court to entertain marriage that is not concluded in accordance with the law it mentioned and disputing parties not domiciliary of the region.

The SNNP National Regional State Family Law does not have a provision related to such jurisdictional question of marriage celebrated in other regional state or the Federal State territory, even though its law recognizes such a marriage. Instead, it provides an applicability of the Ethiopian Civil Procedure Code to treat litigation matters of family cases. It states:

> *Notwithstanding the procedural provisions in this Law, the provisions of the Ethiopian Civil Procedure are applicable over the disputes on matters provided in the Law.*[274]

On the other hand, the Law provides that: "Any Laws, Regulations, Directives, Decisions or practices inconsistent with this Code shall not be applicable on matters provided in this Code."[275]

Based on the two Articles cited above of the SNNP Family Law, one may raise a question that: is there any possibilities that can bring the family law and the Civil Procedure to one and treat the dispute without contradicting to the federal arrangement in accordance with the state structure and power and jurisdiction of courts emanated from the system as there is no Federal or Regional Civil Procedure Code that can fit to the Family laws?

[273] Supra 266, Art.23(2)
[274] Supra 268, Art.122
[275] Id Art.334

To begin with, the Civil Procedure Code was designed for the unitary structure of government. Consequently, it is very hard to apply it for the federal set up where jurisdiction is divided between the central government and federal states. Therefore, it is naïve to say that the Civil Procedure is helpful to solve disputes related to family as the SNNP family law made a reference to. Thus, the approach of the SNNP Family Law to settle the question of the jurisdiction does not solve the issue the writer is raising.

In jurisdictional principles, it is discussed that the citizens have a right of two jurisdictions, personal jurisdiction and subject matter jurisdiction. These are also left unprovided in the family law codes of the Federal, the Tigray, and Amhara National Regional States.

Even the "Federal Family Law" Code, has not a single provision which deals with the fate of the married parties' marital status conferred by marriage determined by the family law of the place of domicile, (whether Federal or Regional States domiciliary). Similarly the Code is silent regarding the power of federal courts (their jurisdiction) if parties brought their case before it.

In the three Family Codes (the Federal, the Tigray, and the Amhara National Regional State) the fundamental jurisdictional law choices like statutory solutions: validation of marriages that were validly executed elsewhere, party's choice which law applies and party autonomy is kept silent. Especially, the "Federal Family Law" has no rules dealing with how to seat in diversified marriage dispute resolution choice of jurisdiction on regional states issues and the way receiving a case should be applied of possibly transferred from the other regional state.

The implication of the gap can be effectively explained by the following hypothetical case.

Assume that the couples concluded their marriage in Tigray where they were residents. Their domicile was in SNNP Region. Currently, they are residing in Addis Ababa. The issue revolving around their marriage arises here in Addis. Assume that the husband brought the issue before the Federal First Instance Court. The wife challenged the jurisdiction of the court. What can the court do? Either to entertain or decline the jurisdiction, the court has to be guided by the pertinent family law. What makes the issue even more problematic is that there is no conflict of law rules that can be resorted to. Consequently, assuming jurisdiction is problematic. Assume that the court declines,

where should it refer the matter? On what legal basis? Again assume that it refers it to Tigray where it was celebrated. The Tigray Family Law does not also address the issue. What if the issue is referred to the SNNP court? Can the Civil Procedure Code to which the SNNP Family Law makes a reference adequately resolve the issue without contradicting the already set Federal structure?

The above posed issues clearly indicate that, due to lack of jurisdictional provision in the Family Laws, disputes related to marriage may oscillate all over the regions [cities] which do have some connections with the issue. Therefore, there should be a clear cut rules in the family laws which deals with the situation by which a court in a given state can assume jurisdiction over disputes related to family matters than using doctrines and general principles, which are far from the family laws to fill a lacuna.

3.3 Choice of Law

This of course comes into picture after the issue of jurisdiction is determined. Hence, the discussion is made with the assumption that the court, which assumes jurisdiction under consideration, decides the issue of jurisdiction.

According to Story:

> *The law of the regional state of celebration of marriage generally determines validity in the absence of the strong contravailing marriage policy of the other regional state closely connected with the marriage. As to constitution of marriage, as it is merely personal, consensual contract must be valid everywhere, if a marriage is valid where it was celebrated, it is accepted as valid everywhere. The converse is also true that if a marriage is void where it was celebrated, then it is void everywhere; and shall be determined by the law of the place of celebration. But, with regard to the rights, duties, and obligations, thence arising, the law of the domicile must be looked to. On this ground, there might be no difficulty of choice of law, which can arise where the marriage is concluded validly in accordance with the law of the place of celebration.*[276]

In Ethiopian practice, although the marriage policy seems to provide potential escape route, the regional states' courts potentially uphold marriages that are valid where made, but barred by internal domicile law and the regional states domicile provisions. But the confusing problem in such case is that, all regional states (including the Federal one) courts are in peril of generally to distinguish in between the regional and the Federal

[276] Supra 203, P.196-198

states marriage legality and illegality reflecting a strong marriage policy favoring certainty regarding the status (validity) of marriages. For instance, the Federal Revised Family Law, the Revised Family Law of the Tigray National Regional State, the South Nation Nationalities and Peoples Regional State, and the Family Law of the Amhara National Regional State have no single provision of choice of law which help to resolve problems that might be emanating from the nature of marriages celebrated in different regional states and out of their jurisdiction. But only the Oromiya National Regional State Family Law has the provision of choice of law. This Family Law clearly puts in it with an option to the parties. The Code states that:

> *Notwithstanding the provision of Article 23(2), the law does not prohibit the parties to adjudicate their dispute by the law of the*
> *Place of celebration of their marriage, where the parties, spouses agreed and submit petition to the court*[277]

Choice of law is not provided in the "Federal Revised Family Law", the Revised Family Law of the Tigray National Regional State, the SNNP Family Law, and the Family Law of the Amhara National Regional State, apart from the marriage law in their Codes exceptions, do not recognize that as significant that as marriage is formally regarded, for choice of law purposes, not only as contract but rather as a status conferred by the law of the celebration. The silence shows that the legislatures have opted for the status approach to marriage. Which means in principle the status approach to marriage has some important implication for choice of law. If not, the above-mentioned Family Codes are exposed for the critics for ignoring the rights of parties whose marriage is celebrated in other regional states. In addition, in the above Family Codes the elements like:

i) The applicability of the laws of the state with the most compelling interest, which means whether the court of interested regional state or the other regional state court would apply the marriage provisions exception to the application of the one regional state law against that interest of the other,
ii) The valid state interests like forum, compensatory, protection, regulatory, property, in the general sense; interest of forums in applying their own law only, states' interest in compensation of their domiciliaries, states interest in preventing marriage law harm within its borders and states interest in regulating property within its border, are not included (recognized).

[277] Supra 266, Art.23(3)

Generally, if these family codes include choice of law rules in their provisions: (1) they let people choose from among various choice of law rules of marriage to use as a discovery mechanisms, the regional states have also an incentive to adopt various marriage rules to settle the parties dispute just fully. At the same time, the society makes an opportunity to discover superior rules by observing the law individuals select; (2) the choice of law helps ensure that the chosen law suits the parties specific needs better than a 'size-fits' all marriage laws (rules) whereby all family issues are determined by a single rule. This reduces the error and costs of applying unsuitable rule.

The discussion above is not without the awareness of the constitutional provision, which provides for "This constitution shall not preclude the adjudication of disputes relating family laws in accordance with religious or customary laws, with the consent of the parties to the dispute" [278]

But, the problem would arise as the provision talks about the religious or customary laws with State Laws not between states' family laws. Moreover, the problem of choice of law would ultimately arise if one of the parties contests the applicability of these laws, as it is possible only if both of the parties consent to it.

As it is discussed above, except that of the Oromiya Family Law, other family laws are silent on the issue of choice of law. Accordingly, it goes without saying that once jurisdiction is assumed, the problem of choice of law would arise. To substantiate the issue, the following hypothetical case is given. Assume that a marriage is concluded in Tigray according to the law of the region. During the conclusion of the marriage, the husband's domicile is in SNNP Regional State and that of the wife was in Oromiya, Now, the parties are residents of Amhara National Regional State. It is here that dispute arises and being brought before the court of the Amhara National Regional State.

Assume that the court decides that it can assume jurisdiction. The next issue is deciding on whose state law is going to be applied, i.e., the choice of law issue. As stated, there is no provision, which provides for such a rule. Thus, it is inevitable that the court faces the problem. It can also be reasonably assumed that parties may not be in agreement on whose law should be employed. Consequently, the dispute may end up in bringing a sort of problems on the consequences of the decision. As addressed in the example, there are some connecting factors to the other three regions; Tigray, Oromiya and SNNP Regions.

[278] Supra 248, Art.34(5)

It is only if the case is brought before Oromiya courts that the case will be solved without a problem based on the law of the region, as Art.23 (2) of the Oromiya Family Code provides for the applicability of its own family law in principle and gives the parties an autonomy to choose the law they want to be applied under Art.23 (2) as an exception, provided that they are residents.

3.4 Recognition of Marriage Celebrated out of the Region

As stated under chapter one and two, couples move from place to place; consequently, concluding their marriage in one region, they may end up in living in another sister-state. Thus, the validity of the marriage concluded somewhere else may be contested in another place. As such, how to determine this validity primarily needs an answer to a question: "which law has to be employed to determine the concluded marriage?" This has several implications as marriage has many and different consequences once it is concluded. These consequences are principally dependent on whether the marriage is valid or not. Hence, there might not be such consequences, if the marriage is found to be *void abinitio.*[279] Therefore, there is a need to have a law that has to be employed to determine such validity. In a multi-culture, legal pluralism, and various moralities in a country like Ethiopia, it is a fait in plain that the different regions may provide for different elements for the validity of marriage. Consequently, a marriage concluded validly in one region might fail to fulfill the requirement in another region.

To solve such problems, the principle is that, though there is an exception, the validity of a marriage is determined by the place of its celebration.[280] As discussed under chapter one and two, this is employed to give certainty and predictability for the married couples. Had it not been for this, the parties are not going to benefit the rights accorded to them by marriage and burden the obligations it imposes.

In FDRE Constitution, the power to enact the family law is given to the states by virtue of art. 52(1) as enacting family law for the country is not provided under art. 55. Thus, besides the family laws discussed herein above, the states may enact their family laws, which may differ in contents from one another. One of the contents may be the essential requirement for marriage. Then, it is unavoidable fact that a marriage that is concluded in a region may not be in line with that of others. For this reason, it is a must that there should be a mechanism for solving this problem, as the marriage which is concluded

[279] Supra 203, P.233
[280] Supra 76, P.641

fulfilling all the necessary valid marriage elements in one region should be protected from an attack in another region that would render it invalid. Herein under, the mechanism that is employed in the five family codes will be discussed.

To begin with, the "Federal RFC" provides for the recognition of marriage outside Ethiopia. Accordingly, it provides that "so long as it does not contravene public moral, the marriage concluded abroad is valid in Ethiopia."[281] As discussed above, there is no Federal Family Law as such in Ethiopia, as states are empowered to enact their respective family law. Thus, it is apparent that the "Federal RFC" is only applicable to the two cities (Addis Ababa and Dire-Dawa) directly responsible to the Federal Government. From this one may take the following two scenarios; as the RFC is silent on the recognition of marriage celebrated in the regions and as the law only talks about the marriage concluded abroad, it has to be employed only to determine the validity of marriages celebrated outside Ethiopia, or as the "Federal RFC" is only applicable to Addis Ababa and Dire Dawa, it has to be employed by analogy to determine the validity of marriage celebrated outside the two cities.

The other Family Code that is silent with regard to the marriages celebrated outside the region is that of the Tigray National Regional States' Revised Family Law. Accordingly, a judge seating in bench in this region ultimately faces the problem: how to determine the validity of the marriage celebrated outside the region. The judge may resort to the principles discussed under chapter one and two: that is determining the validity according to the law of the place of celebration. But, to what extent this is warrantable without a legal provision depends on many factors like the jurisprudence developed by courts of the given region.

In this regard, the Oromiya National Regional State's, The SNNP, The Amhara National Regional State's Family Laws clearly provide the recognition clause. Accordingly, "A marriage concluded in Ethiopian regional states in accordance with the law of the region of celebration out of it so long as it does not contravene public morals is valid in the Region"[282]By the token, it is provided that: "So long as it does not contravene public moral, a marriage concluded out of the region in accordance with the law of the place of celebration."[283] Still in another enactment for the same issue, it is stipulated that:

[281] Supra 263, Art.5
[282] Supra 266, Art.23 (1)
[283] Supra 268, Art.15 (2)

"Marriage celebrated out of the region in accordance with the law celebration shall be valid so long as it fulfills those essential conditions of marriage prescribed under the law."[284]

In these three regions, there is recognition to the marriage concluded in other regions so long as it fulfills the requirements of the law of celebration, though there is another attachment: public morality.

Another important issue in relation to validity of marriage to be raised and discussed is that of the consanguinity. Thus, let us see the consanguinity requirement in the different Regional family laws, as it is one of the basic elements of valid marriage and one state may fail to recognize a marriage validly celebrated in somewhere else if there is no rule for recognition. If the "Federal RFC" is taken, it provides for a fulfillment of a prohibition of marriage in a collateral line, a man cannot conclude marriage with his sister or aunt; similarly, a woman cannot conclude marriage with her brother or uncle.[285]

The Oromiya, SNNP, and Tigray Family Laws have made the level of prohibition of marriage uniformly: "seven generation" in a collateral line.[286] That of the Amhara National Regional State's Family Code adopts that of the "Federal RFC". [287]

Now, let us assume that a marriage is concluded in one of the three regions or in Addis Ababa or Dire Dawa and the couples found themselves being the residents of Tigray. This assumption is intentionally made to see the problem that would arise in Tigray, as the law does not have a clause of recognition. Thus, if a judge in a bench in the region faces an issue regarding the validity of the marriage concluded in the aforementioned places, he may opt for using law of forum as he does not have a recognition clause in his family law which could guide him to follow rule of place of celebration or otherwise. If the judge fails to apply the principle of "place of celebration", marriages celebrated in the two cities and Amhara Region are going to be not recognized for being inconsistent with the "seven degree" relationship requirements, without a resort bring made to the issue of "public morality".

[284] Supra 267, *Art.16 (1)*
[285] Supra 263, Art.8 (2)
[286] Supra notes (266, Art.27 (2), 268 Art.18 (2), 263 Art.17)
[287] Supra 267, *Art.19 (2)* and 263 Art.8 (2)

An attempt is made to show that the issue of conflict of family laws is not addressed or not well addressed. The writer still seeks to know if resorting to other laws could solve this issue. So, the writer will try to see if other laws and the draft private international law could give answers to the problems posed above.

3.5 Other Laws and the Draft Private International Law

It is discussed above that full-faith and credit clause is one of the methods used by some federal states like USA to get the federal units to respect each other's acts. This element is lacking in our Constitution. Besides, there is no provision in the constitution with regard to who should enact conflict of law rules that would regulate issues related to conflicts of laws between states in matters within the power of states and between the federal government and the states in areas of concurrent power between the states and the federal government. In fact, the power to enact laws related to interstate commerce is given to the Federal HPR.[288] But, family matters are not a commercial issue. Thus, the conclusion is that, regulating the relationship of the issue of family law among states is beyond the power of the federal HPR. Consequently, the power to enact conflict of law rules is the power of the states by virtue of Article 52(1) of the Constitution.

In order to tackle problems that may arise from such loopholes, the Federal HPR has opted to come up with a law that has a provision which empowers the federal courts to order a regional courts[289] and empowers the federal supreme Courts to give decisions over the issue of jurisdiction where courts of regional states or federal court and regional courts disagree on it. In a federal state, judicial, legislative and executive powers are divided by the constitution and in case if a problem arise, it is the umpire that resolves the matter based on the constitution. In our case, the umpire is the HoF by virtue of articles 62 and 83 of the FDRE Constitution. Thus, the obvious conclusion is that while the Constitution is silent about who should determine the jurisdictional issue among or between states or between federal government and the states, it is not a constitutional mandate to empower the Federal Supreme Court to settle the disputes.

The Draft Private International Law, with this regard, has very interesting provisions. Under Article 3, it provides that 'term country and Ethiopia, shall apply *mutatis mutandis* to interstate conflicts. Under chapter two of the Draft Proclamation, which deals with the jurisdiction aspect, it provides that the interstate dispute jurisdiction shall lie with the

[288] Supra 267, Art 55(2) (b)
[289] Supra 259, Art 35(1)

federal high court. From these two provisions, at least two unconstitutional issues may be derived, in fact the draft law is against article 35(2) of proc. 25/96 where the power is given to the Federal Supreme Court. The first inference is that there is no any constitutional provision that empowers the federal high court to assume such kind of jurisdiction. Secondly, there is no power given to the federal HPR to enact laws concerning conflict of law rules in general and conflict of family law rules in particular. Thus, the conclusion is that the draft law disregards the power division between the Federal Government and the federating units and even proclamation 25/96, which deals with the federal courts jurisdiction.

If we see the provision of the draft proclamation, which deals with the jurisdiction of courts over marital issues, the approach it adopts is that, if one of the spouses is domiciled in Ethiopia, the Ethiopian Courts shall have jurisdiction.[290] If we apply, mutatis mutandis, this rule to the interstate family issue, it might be said that if one of the spouses is domiciled in a region, the region in which he or she resides will have jurisdiction. Still, there is an already posed question that: is it constitutional for the HPR to come up with such kind of law?

With regard to applicable law [choice of law], the draft law provides numerous provisions. Accordingly, it provides that unless otherwise it is disregarded by the Ethiopian public policy, the law, which is used to determine the validity of the marriage is governed, the law that governs the status of the spouses at the time celebrates the marriage. If the assumption that it is *mutatis mutandis* applicable to interstate family issues, the public policy of the regional state may be used to favor its own law disregarding the law of the place of celebration. It is also provided that formal requirement of marriage is determined by the law of celebration by virtue of article 47 of the draft law. Again, can states take this, as law that governs the choice of law rules if the law is given life in the future is a question that one may ask, as there is lack of constitutional mandate for the federal HPR to enact laws that govern such area?

The draft law also provides for the law that governs the personal and pecuniary effects of marriage and divorce and other issue like filiations, adoption and irregular union.[291] In its approach, the draft law predominately opted for preferring the law of domicile with

[290]The Draft Proclamation to provide for Federal Rules of Private International Law, Article 12
[291] Id, Article 49-62

exceptions provided in case of public policy and the preference of Ethiopian law in case of granting divorce and separation and provisional measures.[292]

With regard to recognition, the draft law also provides the principle by which recognition would be accorded. Accordingly, it provides that the existence of international agreements ratified by Ethiopia and the provision of the draft proclamation.[293] If one wants to apply this principle to interstate matters related to family issue, he or she may construe this as 'there should be agreements between the states'. Thus, one state is only obliged to recognize the decision of other sister states if they have an agreement ratified by its respective state councils.

In conclusion, the attempt by the draft proclamation to regulate interstate conflict of laws, *mutatis mutandis* is a good start. What makes the issue worse is that it is still draft law; and what makes it worst is the fact that there is no constitutional mandate for the Federal HPR to come up with conflict of law rule specifically that regulates the interstate family matters as this is not provided under article 55 of the FDRE Constitution and by virtue of article 52(1) it is that of the States. Thus, legally speaking, it cannot solve the problem that the writer is posing.

Herein above the writer tries to, at least, show that there are problems with regard to the family laws discussed above, though the degree and type might be different. However, one may say that the interstate relationship is a recent phenomenon and there would no problem as the courts normally apply principles and doctrine of conflict of law principles. But, the writer replies to this question saying that, the federal structure as experience in other countries could be used as a point of reference without waiting too long. Besides, the issue of family law is not something that happens at some time in due courses, rather it is a day to day disputes that demands one of the fastest solutions as family is the base for society and if family is at dispute society is at dispute. The mere fact that judges do apply principles and doctrines of conflict of laws could not be a way out. It is necessary to have a law that determines the jurisdiction of courts. In addition, it would be very hard to overrule the objection that might be raised by the parties in dispute. Thus, it is recommended that there should be a law that determines the jurisdiction of a given courts.

[292] Id, Article 46(2), 54 and 55
[293] Id,Art 83(1)

CONCLUSION AND RECOMMENDATIONS

Conclusion

Conflict of laws is a difference between the law of different states or countries in a case in which a transaction to two or more jurisdictions and its rules emanate from the occurrence of conflicts between or among the various legal systems. Accordingly, like in independent states, it also matters in a federal structure.

This of course needs the existence of laws that are materially different. But, the existence of diversity of legal orders by itself is not sufficient for the occurrence of conflict of laws. It is also required that the laws that have equal applicability should be different. In a federal set up, such situation arises when each constituent state has its own system of law, which is materially different from the laws of a sister-state.

Conflict of laws is possible only when there are social and commercial intercourses of people of different territorial jurisdiction. There is always mobility of persons and of things from one territory of state to another resulting from commerce, marriage, etc. Unavoidably, a dispute may arise from these relations of people of different jurisdictions. The relationship may be either between people of different nations or between people of different states within a federal set up.

With regard to question of jurisdiction, the conflict of law rules consists of certain conditions under which the court may have power to adjudicate a case that has an extra-state element. So, when a case containing an extra-state element is brought before a court, the primary duty of the judge will be to use the conflict of laws rules and thereby ascertain whether the court has jurisdiction to entertain the case before it or not.

Once the court ascertains that it can exercise jurisdiction, the next issue to be addressed will be the issue of choice of law. Every system of conflict of laws specifies the particular system of law to be applied in order to determine the rights of the parties. So, conflict of laws rules guide the judge in determining the proper body of law based on which the controversy can be resolved.

The other issue dealt with by conflict of laws rules is the issue of recognition and enforcement of judgment rendered by the court of another state. Conflict of law rules of the various legal units list down those circumstances in which a judgment rendered by the court of another state can be recognized and enforced in another state.

In a federal set-up, rules of conflict of laws play significant roles. Because, inter-state conflict of laws problems arise whenever litigation involves persons and events touching more than one federating state. When the federal and state courts are confronted with a case containing an extra-state element, these rules assist them in giving response to the question of jurisdiction and choice of law.

USA, as a Federal state, is exposed to horizontal and vertical conflict of laws. To solve the problems from the diversity of laws, the federal and the constituent states have their own conflict of laws rule. In addition to that, inter-state conflict problems in the United States involve constitutional issues under the" Full Faith and Credit" Clause, the "Commerce Clause" and the "Immunity and Privileges" Clause of the Federal Constitution and solve it accordingly.

In Nigeria, the legislative and executive powers are divided to the Central and Regional Governments enumerated and residual forms. Each state has its own independent legal system. Because of having unavoidable problem, they established their own choice of law by appropriate state laws to be chosen and applied to solve inter-state conflict of laws. In addition, Nigerian federalism has some problem solving mechanisms with special features. Firstly, judges of all state courts apply the same common law of England. Second, the vast majority of Nigerians prefer to take their cases to the customary courts and majority of cases, usually, those matters relating to personal relations, are governed by customary law. Thirdly, the country has established an appellate court for the whole of Federation, and thus the existence of this court ensures, to some extent, uniformity of law in the country.

Solving the conflict of family laws has a paramount importance, as marriage is an institution, a long continuing relationship by constituting a family. It is the basic foundation of a society. It has an importance under the law because it confers a variety of rights, privileges and obligations that are unique to constitution of marriage. Its existence is subject to regulation by a given law without occasion for repeated redetermination of its validity by another.

Ethiopia has adopted a Federal Constitution for the first time in 1994. And nowadays, there are nine regional states forming the Federation. Under the Federal Constitution, a distribution of power of the state is made between the federal and state governments. So,

each member state has the power to enact its own system of law on matters falling under state jurisdiction. The problem of inter-state conflict of laws may, therefore, occur when one state enacts laws, which may be materially different from the law of another sister-state.

According to the given power of legislation to the Federal and the Regional States by the FDRE Constitution, the Regional States are enacting different laws under the given authority. To be selective and to the point, currently, the four of the nine sister states and both the Federal cities have their own family laws. They are the "Federal Revised Family Law"(for Addis Ababa and Dire Dawa), the Tigray, the Oromiya, the Amhara, and the SNNP National Regional States Family Laws. Following the enactment of the laws, there are gaps that can be the reasons of conflict of laws problems.

As tried to discuss the problems above in chapter three, the Federal RFC and the Tigray RFC are silent on recognition of marriage, which is validly celebrated in the other Regional States. However, the family laws of Amhara, SNNP, and Oromiya give recognition of such marriage. The Federal one only gives recognition for a marriage celebrated abroad as the law demands.

With regard to jurisdiction, except the Oromiya Family Law, all the Federal and other Regional Family Laws do not provide for jurisdiction and choice of law over a marriage out of their territory. A little difference here is that of SNNP Family Law that provides the applicability of the Ethiopian Civil Procedure on the issue of procedure covered in the law. Of course, that is true for the Tigray and the Federal Revised Family Laws, as that do not provide provisions on of jurisdiction and choice of law. Because, it may be wrong in legal aspect and pragmatically, that to expect them to react on a jurisdiction and choice of law while being silent on recognition.

From these laws we can understand and conclude what the problems are: Firstly, there is an absence of law, which actually sustains the validity of a marriage, to take as sufficient by *lex loci celebrationis*. Where a marriage validly celebrated in one state is taken as invalid in a sister -state only for crossing state line, no guarantee of marriage over all the country. Consequently, the right of all lawfully married couples out of the constituent state may not enjoy the benefit of marriage and protection under their Federal country. On this ground, a couple who conclude marriage in a sister-state jurisdiction would have almost no hope of garnering recognition from any sister state. Because of the absence of

such law, couples who validly marry in another state will not have their marriages recognized by other sister-states. Thus, by moving or travelling, couple from sister-states can effectively lose their marital status while in other states. The parties (couples) may face grave injustice. When the once established marriage become invalid, it is clear what the fate of the couples would be: the marriage might be dissolved; persons may refrain to enjoy their constitutional right to liberty of movement and freedom of choice of their residence. It is also opening a door for bigamy, adultery and remarrying, if any, and may have no answer for the question of the effects of marriage such as divorce, matrimonial property, children…etc.

Secondly, the effect of the silence of the laws over recognition of marriage is including in its effect to the regions that give recognition of marriage in their law. Because, the domiciliaries of those states that recognizes sister-states marriage, are not free from impacts of non-recognition of their marriage when couples crossing state line. Consequently, since recognition is reciprocity basis of rights and obligations through convention, the states that recognize a marriage validly celebrated in a sister-state may decide in applicability of the given recognition over the couples from sister-states who do not give marriage recognition reciprocally.

On the lack of jurisdiction and choice of law, it is nothing for the Tigray and the Federal one because of failing on the recognition of marriage that to be adjudicated. To legislate or discuss about jurisdiction and choice of law over non-recognized marriage is to do nothing.

An absence of jurisdiction in the laws of the two Regional states (Amhara and SNNP), can do inefficient in practice for that has recognized in their law. Because, where a dispute arises or related questions of rights, no court can entertain the case without jurisdiction. It is also impossible, no legal ground for *renvoi*. Where the question of jurisdiction does not get answer, no way to raise a question to the next step: choice of law.

When we are searching in our laws for the purpose of finding a solution to minimize conflict of laws between the states due to such case, the FDRE Constitution does not have a “Full Faith and Credit Clause”. The provision of Art.34 (5) that provides not to preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws is also somehow constructive on some area of choice of law

to the conflicting marital issues of marriage but doesn't govern all the problems emanate from the family laws of different states.

Regarding the issue of jurisdiction, proclamation no 25/96 Art.35 (2) provides that: 'where two or more Regional or Federal Courts claim or disclaim jurisdiction over a case, the Federal Supreme Court shall give the appropriate order thereon.' This provision may have role in solving some jurisdiction problems. But, it can't avoid such marital problem and to give an order on jurisdiction matter as its constitutionality can be challenged. .

The Proclamation also provides that in Art, 6(1)(b): "Federal Courts shall settle cases of disputes, submitted to them within their jurisdiction on the issue of Regional laws where the case relates to the same." This provision has a power to play a role as a choice of law and may also solve some problems. But, when we are looking to its possibility over marital issues, there is a difficulty to practice as a choice of law rule since the question of recognition of marriage that is celebrated out of their territory (in a sister-state) is not answered.

The draft private international law provides rules for jurisdiction, choice of law and recognition, which shall apply, *mutatis mutandis* to interstate conflicts of law. The problem here is also first about the constitutionality of this draft law; in case it is given life and the all time *mutatis mutandis* application of the draft law without specific rules in respect of interstate conflict of family laws.

This situation renders many couples unprotected. Because of the absence of such law, partners who validly marry in another state, by moving or even traveling, couple from sister-states can effectively lose their marital status. In the other way round they will be deprived of their many constitutional rights at the back of their marriage. Therefore, to solve this problem the writer would like to recommend some points as follows.

Recommendations:

1. It is obvious and also provided in the FDRE Constitution that one of the main purposes of the present overall system of FDRE is to create and sustain one economic community. And the entire federation should also be viewed as a single unit. So, to attain such objective and assure accommodations of laws in the nation, the Federal Constitution, by way of constitutional amendment, should have "full faith and credit clause" to cover the shortcomings of the laws especially to avoid the non-recognition of a valid marriage concluded in a sister-state and to safeguard the couples and their family and property as well. Therefore, the Constitution should be amended though its amendments are so stringent.

2. The Federal government and the States should have enacted their own conflict of laws rules, which guide their courts to rule on the above matters falling under their jurisdiction. Since the member states are free to formulate their own rules of conflict of laws, in order to resolve the inter-state conflict of laws problems in their respective nation and ensure the rights of citizens who may face grave injustice, I recommend for the enactment of conflict of laws rules for their respective jurisdictions.

3. To minimize the expected conflict of laws between the sister-states, and to make marriage 'portable', ensuring that married couples do not become unmarried just by crossing a state line and children do not become illegitimate because their parent's 'marriage' is not recognized etc., I recommend that the Federal and the Regional states to incorporate in their Family laws in the area of the gaps of each law, especially in recognition of marriage, jurisdiction and choice of laws. To appoint the non-covered areas in each family law, the Tigray National Regional State and the Federal laws are recommended to fill their laws on the recognition, jurisdiction over it, and applicable law over marriage validly celebrated out of their territory.

4. On the Amhara and SNNP Regional States family laws, even though a rule on recognition of marriage is incorporated, which is celebrated in the sister state in accordance with the law of the place of celebration; they are silent on the question of jurisdiction and choice of law of such marriage in their laws. Then, to make operative the recognition they give to marriage, they are expected to amend their family laws in the area of jurisdiction and choice of law.

5. To be helpful if enacted, the draft private international law rules should take the federal set up in to consideration by considering the constitution which is the base for the whole legal system to function in a healthy, consistent and effective manner.

6. Last but not least, to avoid any conflict of laws regarding marriage and to give protection to a families and the society at large, the Federal family law, the family laws of Amhara, Tigray, and SNNP national Regional States are expected, at least, to follow the extent of the steps taken by the Family Law of the Oromiya National Regional State.

BIBILOGRAPHY

BookS

- Abla Mayss,(1999), Principles of Conflict of Laws,(3rd ed.); London.Sydney, Cavendish Publishing Limited
- Albert Ven Dicey & C.G.J Morris, (1993), the Conflict of Laws, (12th ed. Vol. I and II), Sweet & Maxwell Limited
- B.O Newbauze, (1963) The Machinery of Justice in Nigeria (London: Butterworths),
- Cavers David F, (1965), The Choice of Law Process, Ann Arvor; The University of Michigan Press
- Cheatham, (1945), American theories of Conflict of Laws: their Role and Utility, Harvard Law Review
- Cheshire G.C,(19470), Private International Law, (3rd ed) (London; Oxford University Press,)
- Conflict of Laws, (1964), "American Jurisprudence 2d", (2nded. Vol.16) Jurisprudence Publishers, Inc.
- Constitutional Law (1964) "American Jurisprudence 2d" (2nd ed) Jurisprudence Publishers, Inc,
- Crocker H.G. (Jan, 1909) the American Jornal of International Law, Vol.3, No-1: Retrived from JSTOR in 10 April.2010
- Culp Maurice S, (1956), Selecting Readings on Sonflict of Laws, West Publishing Company
- Currie David P. (1968) , Federal Courts, Horn Book (St. Poul, Minni; West Publishing Co.)
- David D. Siegle, (1994) Conflicts in a Nutshell, (2nded.)
- Eckart Gettschalk, *et al, (*2007), Conflict of Laws in a Globalized World, Cambridge University Press
- Erin Ann O'Hara and Larry E.Ribstein, (1999), Conflict of Laws and Choice of Law, George Mason University, School of Law

- Ernest Rebel,(1960), the Conflict of Laws; Comparative Study,(2nd ed. Vol.2) University of Michigan Law School
- Eugene F. Scoles, (1992), Conflict of Laws (2nd ed) (St.Paul Minni,West Publishing co.)
- George W. Stumberg Quoted by Maurice S. Culp, (1956) Selecting Readings on Conflict of Laws, West Publishing Company,
- George W.Stumberg, (1963) Conflict of Laws, (3rd Ed.)
- Graveson R.H, (1969) Conflict of Laws (6th ed) London: Sweet and Maxwell Ltd,
- Haw.Rev.Stat."527-1 and 572-13(c) (1985), Quoted in Supra note 225, P. 5
- Henry C. Black, (19910), Black's Law Dictionary, (6th ed), (St. Poul, Minnis, West Publishing Co.)
- Ibrahim Idris Ibrahim, (April 1990), Materials for the Study of Private International Law in Ethiopia (Addis Ababa University, Faculty of Law) Unpublished
- J.G. Collier, (2004), Conflict of Laws (3rd ed.) Cambridge University Press
- J.H.C Morris, (1967, Conflict of Laws, (8th Ed), London; Stevens & Sons Limited
- J.Story, (1834), Commentaries on the Conflict of Laws: Foreign and Domestic, (3rd Ed.) Cambridge; Maxwell Ltd.
- Jason Chuach &Alina Kaczorowska, (2000), Conflict of Laws, Q&A Series (2nd Ed.) Cavendish Publishing Limited,
- Meador Daniel Jhon, (1991) American Courts; Universal Book Traders (St. Poul, Minnisota; West Publishing Co.)
- Niboyet, (1952), Territoriality and Universal Recognition of Rules of Conflict of Laws, Harvard Law Review 582 (English Version)
- Peter Malanczuk, (1997),Akehurst's Modern Introduction to International Law, (7th ed.) Routledge,
- Peter Stone, (2006), EU Private International Law: Harmonization of Laws, Edward Elgar Publishing, Inc.
- R.D. Kollewijn, (1961), Bilateral Studies in Private International Law; American-Dutch Private International, Comparative Study (2nd ed.), New York, Oseanea Publication

- Sedler Robert Allen, (1968), Ethiopian Civil Procedure, Faculty of Law: Haileselassie-I University
- Sedller Robert Allen, (1965), The Conflict of Laws in Ethiopia, Haileselssie-I University, Faculty of Law
- Symeon C. Symeonides, (2006), The American Choice-of-Law Revolution: Past, Present and Future, (Vol.4); Martinus Nijhoff Publishers; The Hague Academy of International Law Monographs,
- Walter S.Johnsen, (1962), Conflict of Laws, (2nd ed.) Wilson Et Lafleur
- Yntema, (1953) The Historic Basis of International Law, 2American Journal of Comparative Law, P.309

PERIODICALS

- Alison M. Smith, "Same-Sex Marriage: Legal Issues": CRS Report for Congress; Updated -December 5,2005
- Angel L.Sandang, "Renvoi as a Situation and as a Solution"; The University of Sancarlos Law Review, (1962-63), Vol.13
- Caroline Kleiner, An Introduction to General Principles of Private International Law, (16 April 2010), (http://www.unige.ch/ international/ etuda geneve/ gisp/ prog/); Retrivedon on11 May,2010
- Chi-Chung, Conflict of Laws Rules between China and Taiwan and their Significance; St.John's Journal of Legal Commentary, vol.22: 3 Chung Publications, 2008
- Christine Olson, Second Class Families: Inter-state Recognition of Queer Addoption; (http://www. Abanet. Org/ family/ law students/2008 sch wab-olson) Retrived on 11 May,2010
- Conflict of Laws: The Three Parts of Conflict of Laws: Jurisdiction, Choice-of-Law, and Recognition and Enforcement of Judgement, law.jrank.org/…/Conflict-Laws.html; (p.1.) retrived on 16 April 2010
- Dan Care, The Future of Family Law and the Marriage Crises in North America; A Report from the Council on Family Law (http://www. Marriage debate.com) Retrieved on 05/112010

- Evan Wolfson,"The Law of Iinter State Marriage Recognition"; A Summary of Legal Issues(March 20 1996)
- Fisher F.M. "Due Process and Full Faith Credit", Federal Law Review Vol.7 No-1(1975)
- I.O Agbede, "Conflict of Law in a Federal State", Nigerian Law Journal, Vol. 7, 1973
- J. J. Spring, "Conflict of laws in Australia", Sydney,New South Wales; 16 April 2010); (http://www.law link. nsw.gov.au/ law link/ Suprem…) Retrived on05 May, 2010
- "Laws on Registration of Marriage and Divorce"- A Proposal for Consolidation and Reform (Report No.211), Government of India, Law Commission, (October 2008)
- "Laws of Civil Marriages in India"- A Proposal to Resolve Certain Conflicts, (Report No.212), Government of India, Law Commission, (October 2008)
- Mark Strasser, "Interstate Recognition of Marriage and the Right to Travel", express O P., 2009, (http://works.bepress.com/mark_strasser/15) Retrieved on 09 April 2010
- Michael Free Man, "Conflict of Laws", External Program, University of and London, 2006
- Ved Nanda, Dealing with the Shift from Inter-State to Inter-State Confrontation: Conflict Research Consortium; University of Denver, October 25, 1993(1)
- Weeramantry, Judge Christopher G.,(1997) Justice Without Frontiers: Furthering Human Rights, Brill Publishers

Laws:

Domestic Laws

- The Civil Code of the Empire Ethiopia Proclamation No. 165, Negarit Gazetta, Extra Ordinary, Year, 19 No,2 (1960).
- The Civil Procedure Code of the Empire Ethiopia: Decree No. 52, the Negarit Gazetta, Extra Ordinary, Year 25, Issue No, 3 (1965).

- The Constitution of Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, Art: 1
- The Family Code of the Amhara National Regional State Proclamation No.79, Zikre-Hig, (2003)
- The Family Code of the South Nation Nationalities and Peoples Regional State Proclamation No.75, Debub Nearit Gazetta, 2004
- The Family Law the Oromiya National Regional State Proclamation No.68, Megelete Oromiya (extra ordinary issue) 2003 & 83/2004
- The Federal Courts Proclamation Federal Courts Proclamation, Proclamation No.25/1996 Federal Negarit Gazetta, Year 2, No. 13
- The Federal Revised Family Code Proclamation No.213, Federal Negarit Gazetta, (2000)
- The Revised Family Code of the Tigray National Regional State Proclamation No.116, Mekalih Tigray, (200

Foreign Laws

The Constitution of United States of America,

The Restatement of the Law Second Conflict of Laws, the American Law Institute (1971)

ACRONYMS

FDRE	The Federal Democratic Republic of Ethiopia
HPR	The House of Peoples Representatives
HoF	The House of Federation
SNNP	The South Nation and Nationalities and Peoples
RFC	Revised Family Code
CRS	Congressional Research Service
USA	The United States of America

DECLARATION

I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Tesfay G,tsadik