The Problem of 'Renvoi' and the Available Remedies:

A Theoretical Approach

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CHAPTER ONE

1. AN OVERVIEW OF CONFLICT OF LAWS AND 'RENVOI'

1.1 Nature and Definition of Conflict of Laws

When courts are seized of cases, usually they are required to apply the internal law of the state. And most of the time courts are confronted with cases having internal elements. In such a case, the trial court is called up on to determine with reference to the domestic law of that country. However, there are instances by which courts are required to refer to the laws of foreign country to entertain cases having foreign element.[1] and as it is described by Peterstone.

> *"Foreign element arises from a connection of a person involved (such as a foreign domicile or nationality of an individual or the foreign location of the place of corporation), or of facts or events (for example, that the contract was concluded or performed abroad or contained a clause choosing a foreign law or court or the accident giving rise to a tort claim occurred abroad, or of property involved (such as the foreign location of land whose little is at issue)"*[2]

To give an illustration; Mr. A, who is an Ethiopian national, concluded a contract with Mr. B, who is British national. The contract was to be performed in Ethiopia. Suppose, Mr. "A" fails to perform the terms of the contract. In this case, so long as the transaction or Occurrence central to the case has a connection to two jurisdictions conflict of laws comes in to operation. In other words, the presence of foreign element presupposes a potential conflict of laws problem. Hence, in the presence of foreign element the court looks in addition to its own law to the relevant rules of foreign law to which the case most appropriately belongs for the real adjudication of the case.

As a matter of fact, there are various municipal systems of law with great disparity in their rules to handle the transaction or to regulate the legal relations of daily phenomena. And conflict of laws rule comes into play when the issue before the court affects some fact or transaction that or transaction with a foreign system of law. [3] In addition, Blacks law dictionary defines conflict of laws as,

> *"That branch of jurisprudence arising from the diversity of Laws of different nations, states or jurisdictions in their Application to rights and remedies which reconcile the inconsistency or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the laws of another jurisdiction (the acts or rights in question having arise under it) either where it varies or where the domestic law is silent or not exclusively applicable to the case in point."* [4]

Conflict of laws, therefore, is that branch of law by reference to which no final adjudication or decision of matters having foreign element an be determined. It merely shows the applicable law under which a case having foreign element is to be decided. [5] In other words, whether the applicable law is domestic or foreign is to be determined by the rules of conflict of laws. Generally, the rules of conflict of law is not to render a decision on the merits of the case. Rather it is a guide line to determine the jurisdiction, the appropriate governing law, and recognition and enforcement of foreign judgments. [6]

It is important to understand that conflict of laws has an international character for it regulates the legal issues emanating from transactions between private persons. [7] However, though it has, in this sense, an international aspect, it is principally a branch or part of municipal law. And that is why every country has its own rules of conflict of laws.

So far as conflict of laws is concerned a state or a country could mean to be any portion of the earth's surface having its own system of legal order differing materially from that of any other country. [8] This is to indicate that the strict meaning of a state may not serve for the legal connotation of a state for this purpose. Therefore, in its legal connotation, with in the territorial limits of a country variety of legal systems may operate either in a situation where by a country consists a number of provinces (states in a federation) each with its own low, as for example the USA, or in a single country where by different nations are governed by different systems of law. [9] Thus, with in Federal states the problem of conflict of laws as to the selection of the appropriate law or as to the choice of jurisdiction could also arise. And such occurrence of problem is usually called Inter-state conflict of laws. [10]

Coming to the terminology of this Brach of Law, 'private international law' is also another title to the subject matter which is used primarily in continental countries and the term' 'conflict of laws' is adopted by the United states and Canada. [11] And for the purpose of this thesis both terms are used interchangeably.

It is important to bear in mind that private international law is distinguished from public international law for the later deals with the legal relationship between states and establishes a legal order governing states.

1.2 Scope of Conflict of Laws

With regard to the definition of the scope of the branch of law called conflict of laws there seems to exist a trifle difference between the two major systems of law. In civil low countries the sphere of the subject matter primarily deals with the question of choice of law, and matters of jurisdiction and recognition and enforcement of foreign judgment are related to international law. [12] On the other hand, in the common low countries conflict of laws is concerned with choice of jurisdiction, choice of law and recognition and enforcement of foreign judgments. [13] But, speaking generally, there are three kinds of problems dealt with by the rules of private international law. [14] First, rules on question of jurisdiction define

the basis in which courts of the forum country are competent to entertain a case which has a foreign element, i.e., choice of law. Thirdly, it defines the circumstances in which the judgment of a foreign court is to be given some effect in the forum, i.e. recognition and enforcement of foreign judgment.

Whenever a court of a certain stats is seized of a case having no-external elements, obviously, a question of jurisdiction arises. By the same taken, a court of a certain state seized of a case having external element has to, make sure that it has jurisdiction over the defendant as well as the cause of actions. [15]

In other words, after considering the facts and circumstance of the case; the fundamental question of jurisdiction or competency of a court, with out which the court cannot proceed, has to be answered. And jurisdiction of court of a state is defined as the power or ability of a state give a judgment enforceable or binding on individual or his property. [16] in other words the court has to be competent to entertain a certain case. And as to the competency of a court serawit eshetu, instructor of law in Bahir Dar University, states:

> *"A court is said to be competent when it has sufficient nexus with the case involved. This means, there must be a adequate or satisfactory link which can justify the assumption of jurisdiction."*[17]

This being so, however, there exists a difference between the common law and civil law countries as to the competency of a court. In the common law countries jurisdiction is assumed based on the mere presence of the defendant with in the territory of the state provided that the service of summons is made on him.[18] in other words, the mere physical presence of the defend ant and the ability of the state to force him is the basis of jurisdiction. On the other hand, civil law countries exercise jurisdiction on the condition that the defendant is the national or domiciliary of the forum state, or when the events rise to litigation took place with in the territory of the forum state.[19] therefore, it can be said that, unlike the

common law countries the civil law countries demand an effective or sufficient contact of the forum state with that of the defendant or the subject matter.

When the court assumes jurisdiction to entertain the case, the next step is selecting the appropriate law under which the forum applies in determining the merits of the dispute.[20] it is to mean that the court has to scrutinize whether the law of the forum or the law foreign country which is connected to the issue of the dispute shall apply. Here, it is important to bear in mind that both choice of jurisdiction and choice of law are independent of each other. [21] even though the question of question of jurisdiction is decided in favour of the forum state, the question of choice of law may be decided in favour of another system of law. In addition, for different aspects of a case having foreign element, different legal systems may govern.[22] it is obvious that the appropriate law is to be determined (selected) conflict of laws of the forum and the court may come across with, for instance, the place of celebration as governing to the formal validity of foreign marriage and the law of the domicile as regards to the capacity to marry.

The third issue which is embodied in the rules of conflict of laws is the question of recognition and enforcement of foreign judgment. As I have mentioned earlier, every state defiance the circumstance under which a judgment of a foreign country is to be given some effect. And broadly speaking, when the foreign judgment is a judgment a court of competent jurisdiction, recognition will be accorded immediately for the purpose of enforcement.[23] in addition, irrespective of the right ness of the applicable law chosen by the forum and irrespective of the correct determination of the fact of the case, a foreign judgment under which the foreign court has jurisdiction to entertain will be recognized as valid.[24] for example, In the England if, in the absence of fraud, a foreign court possesses jurisdiction in the English sense, but fails to apply the proper system of substantive law, the judgment or decree will be recognized as valid.[25] thus, we can see that the question of recognition and enforcement of foreign judgment is not independent of the question of choice jurisdiction. Apart from this, generally,

if the foreign judgment not in conformity with the local norms as to the public policy or public moral, recognition will not be accorded though the rendition court had jurisdiction to entertain. [26]

It can be summarized that the scope of conflict of laws is confined to the rules on choice of courts, rules on choice of law and rules an recognition and enforcement of foreign judgment.

1.3. The Need for Conflict of Laws

As a matter of fact, persons are not confined to a single territory during their life span. There are instances that could give rise to the mobility or interaction of persons from one territory to any other territory. Persons living in different states could be exposed to transact and, inevitably, disputes, which involve people from more than one state, may arise from the transaction. There is as a matter of course, a diversity of laws and courts among states. Therefore, just as municipal laws exist to settle the disputes of purely domestic affairs conflict of laws owes its existence to the recognition in one country of acts performed or rights created in another country.[29] thus, the court of the forum has to take in to consideration the foreign element in order to apply the law of another state. But failure to recognize the rights acquired In another country may result in unfairness to a party who may have relied up on the law of another state.[30] in other words, it is being said that the real determination of rights of the parties necessitates the application of the relevant rules of conflict of laws.

In addition, individuals who enter in to international relation to reasonably expect where and how their case is to be handled. And private international law creates certainty and predictability In the minds of individual as to where and how their issue is to be adjudicated.[31] in other words, private parties involved in any transaction.

Further, if people need to know their fate of the relation they are involved, uniformity, which is the ultimate goal of conflict of laws, in the decisions of the

case is highly required.[32] and this uniformity of decisions is attained by the existence of private international law. Another need for the existence of conflict of laws is to eliminate forum-shopping.[33] obviously, the exposure or circumstance where by the plaintiff circumspect a convenient court of a nation is avoided by such branch of law.

Finally, as indicated in the previous sub-section, private international law tells us when to assume jurisdiction and when to apply foreign law. And conflict of law rules of so money countries, as I mentioned earlier, recognize that a judgment of foreign court having jurisdiction will be accorded recognition and enforcement. Hence, securing enforcement of foreign judgment is one of the matters addressed by private international law.[34]

1.4. The Problem of Renvoi (in general)

In the previous section, we have mentioned that in the presence of an external element in disputed litigation, the court of the forum has to scrutinize whether the law of the forum or of the foreign country shall apply. And the determination of the applicable law is accomplished with due reference to the conflict's rule of the forum.

This being so, however, in the course of selecting the applicable law the problem of "Renvoi" arises. And the term "renvol", which is a French word, means "refer back" or 'sending before the court'.[27] such a problem exists whenever the choice of low rules of the forum refers a disputed matter to a foreign state and the conflict of law rules of whose would have referred the matter to the forum or to the law of another third legal unit.[28] this means that renvoi problem comes in to picture when the selected foreign law fails to provide a direct solution and it indicates another system of law under which the disputed matter is adjudicated. For instance, the matter before the court of Ethiopia may concern a contract made or a tort committed in Kenya. In this case the conflict's rule of Ethiopia may indicate that the right of the parties is determined by the substantive law of the

forum, in which case nom problem arises. If, however, the conflicts rules of Ethiopia direct that the case be determined by certain foreign law (in our case law of Kenya), a further reference by Kenyan law to the forum or to another third state may exist. It is in such circumstance that the renvoi problem is said to exist.

Generally, the renvoi problem appears whenever the foreign law refers the case back to the forum or to another third state. This concept will be discussed in detail in chapter three.

End notes-chapter one

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CHAPTWR – TWO

2. Problems in Selecting the Appropriate Law

2.1. Characterization

As I have said earlier, the court, once it assumes jurisdiction over a case containing non-internal element, has to determine the appropriate law. In determining the appropriate law the court has to under take a number of steps to the whole sphere of conflict of laws.

In the process of selecting or determining the applicable law characterization plays a significant role. It is obvious that different countries of the world have their own municipal legal system. And with in every municipal system of every country rules and principles are classified in the different divisions of the system. In other words, the rules of every state are classified under different categories such as succession, contract, tort, property and procedure. There fore, a court, for the real application of the rules, has to place any situation of fact, on which it has to adjudicate, in to its appropriate law.[1] although this process exists in municipal law, it can be said that it creates no complexion for it is a common process of the domestic courts. However, owing to the diversity of the laws of every country characterization appears to be a chronic problem in choice of law process.[2]

Characterization is defined as a process whereby it is determined whether a certain disputed matter is allocated in to the potentially applicable categories or not.[3] it is also defined as an analysis undertaken by the court in the allocation of the question raised by the factual situation (example, tort, contract succession) and of the nature of each question (whether it is a matter of 'procedure' or of' 'substantive' law) in order to reveal the appropriate system of law.[4] it is simply to mean that characterization is the determination of the legal nature of the matter at hand in to its legal category.

Generally, there seems a uniform proposition that the pervasive difficulty of characterization or calcification is divisible in to three parts. [5] the first part deals with the 'subject-matter' characterization or legal issue, for example, the determination of whether a court has before it a tort or a contract issue in order to apply appropriate rules of conflict of laws. The second part deals with the definition and interpretation of "connecting factor"; the word which indicates whose law may be applicable to the merits of the case. The third part concerns the extent of application; characterizing whether the issue is of 'substantive 'or procedural' law.

2.1.1. Subject matter characterization

This aspect of characterization deals with the determination of the legal issue or factual situation to its legal category. In other words, the court has to decide whether the issue in question belongs to the category of succession, tort, contract or matrimonial property, etc. and the applicable rule of decision is chosen on the basis of to what category the subject matter is characterized.[6]

Therefore, constant awareness of the subject matter characterization would create the application of the appropriate law to which the choice of law rules would indicate.

However, the placement of factual situation to its legal category may create difficulty for the fact that different systems of law characterized the same issue differently. This process of characterization appears to be pervasive problem when the forum's legal system and the foreign states legal system characterize the same disputed issue differently.[7] in other words, for instance, a factual situation or legal relation may be categorized as sounding in succession in one legal system and, on the other hand, the same factual situation or issue may be classified under the category of matrimonial property in another. Thus, it can be recognized that the process of characterization has its own impact on the choice of law process and there up on the ultimate decision of the merit of the case. To

give an illustration, for instance, an English man domiciled in England concluded a contract of marriage with a French lady domiciled in France later on he refuses to perform the marriage. Now let us assume that the action is brought before the court of England and the English court characterizes the breach marriage promise as breach of contract. In this case since the rules of choice of law indicate that the governing law is the English law, the English court would award compensation. If, on the other hand, the action is brought. And we can further understand that characterizing the same subject matter differently by different state would affect the outcome of the litigation. Thus, the main problem as to the subject matter characterization should prevail.

2.1.2. "Connecting factors" characterization

Determining the connecting factor is another problematic aspect of the characterization process. Obviously, it can be said that the ultimate task of choice of law rules is to select the governing law for the real decision on the merits of the issue before the court. And the court, once it has characterized the legal relation in to its appropriate legal category, has to determine the applicable law via the connecting factor embodied in the choice of law rules.[8] in other words, the would be governing law is dependent up on the connecting factors. Connecting factors are legal concepts that indicate or connect the legal categories to the proper law.

It is obvious that rules of private international law of every country, employ connecting factors such as 'nationality' 'domicile' 'the law of the place of celebration', the law of where the property is situated', etc. therefore, these concepts or terms are indicator under which the applicable law is determined. This being so, rules of private international law of so many countries recognize that the law of the suits of immovable property governs the issue of succession, formal validity of marriage is governed by the law of the place of celebration and the matrimonial rights of spouses to movables is governed by the law of their domicile.[9]

However, inconsistency in choice of law usually may appear in three ways as far as the determination an employing connecting factors is concerned.[10] first, even though the connecting factor specified is the same In respect of a particular matter, but the characterization of the same subject matter differently may result in the use of different connecting factor and thus result the election of different laws to the same factual situation. Secondly, even though the legal system of the two country characterize the factual situation in the same way, the conflict of law rules of each country may, however, specify different connecting factor with respect to the same factual situation. And the third case where by inconsistency in choice of law rules may appear is that when both countries employ the same connecting factor with respect to the same type of question, but they differ in the meaning of or in defining the concepts attributed to connote the connecting factor. Therefore, where such a conflict of rules appears in one of the instances specified, it will be desirable to decide which of the various characterizations must be applied.

To illustrate the difficulty, suppose an Ethiopian and Kenyan entered in to a contract by correspondence, the offer being made in Kenya and the acceptance mailed at Ethiopia. In such case, assume the law of Ethiopia says the contract is made at the place where the acceptance is mailed. On the other hand, according to the Kenyan law the place of contracting is the place where the offer is mailed. And further, assume that as per the private international law of both countries that law of the place of contracting is the governing law to the validity of the contract. Therefore, notwithstanding that they both use the same connecting factor, there exists a conflict of views raised due to the fact that the connecting factor is defined or attributed differently. Thus the question that arises here is which of the meaning or definitions should prevail?

2.1.3. Substance – procedure characterization

As I mentioned earlier, once the subject matter is characterized to its legal category, the next step is that the rules on choice of law of the forum will indicate the proper law to be applied. However, when the choice of law rules of the forum

select the law of another country or jurisdiction as proper law, a question arises as to the extent of that selection; [11] whether the reference made include both the substantive and procedural laws and, further, whether the reference include the choice of law rules of the selected country. (the later issue will be dealt in detail in the next chapter).

In all legal systems of the world it is an accepted principle that all matters of procedure are exclusively governed by the lexfori or by the law of the forum. [12] it is to mean that the court of the forum always apply rules of its own law for matters which are characterized as procedural. In other words, rules of foreign law which are procedural will not be applied by the court of the forum. Thus, no matter what the proper law is, either foreign or domestic, the forum state applies its own procedural law. And the rational behind this principle is that if the court applies the procedural laws of the foreign country in addition to the substantive laws, it becomes a court of another country.[13]

In order to apply this principle courts have to decide or characterize whether a rule of law or legal relationship is one of substance or procedure. [14] And this aspect of characterization provides another difficulty between which court have to decide. Obviously, a rule of law characterized in one way in one country may be characterized in another way in another. For instance, a statute of limitation is regarded as procedural in common law countries; on the other hand, it is characterized as belonging to substantive law in other countries. [15] The matter of substance-procedure characterization is controversial and it has its own impact on the out come of the litigation.

Generally, there is an 'outcome determinative test' which classifies things that materially affect the result of the litigation as substantive and, on the other hand, things that do not affect the result of the litigation as procedure. [16] However, rejecting to apply the foreign law when it is procedural is very difficult for the fact

that some procedural laws have the effect of substantive rights. Therefore, classification pursuant to this test doesn't solve the problem.

2.2 Approaches to Characterization

As we have said here –in-above, there is a controversy as to which state's characterization should prevail in each aspect of the problem. To this end so many solutions have been put forward by different scholars. And the approaches or solutions forwarded have been varied and disputed. Some scholars propound that characterization should be based on the lexcausae. Apart from this, other propose that characterization should be based on the analytical jurisprudence and comparative law. Hence, to have a better understanding of the approaches it would be convenient if we can treat them separately here-in-below.

2.2.1 The lex-fori Theory

The advocates of this theory propound that the court should characterize the issue on the basis of the categories of the internal law of forum. [17] Bartin, among the advocates of the lexfori, says that since the basis for the application of foreign law is the sovereign's willingness to restrict its sovereignty, no foreign law can limit the application of the domestic law in determining the category of the factual situation.[18] This means that since the limitation on the application of domestic law is voluntarily willingness, no foreign law can suggest whether a particular factual situation belongs to particular category or not. In addition, Kahan and Bartin, proposed that classification based on the law of the forum is desirable because the definitions of character embodied in the body of law are already familiar to the judges of the forum at the same time litigants would in advance be certain how the matter would be classified.[19] In other words, since the judge is trained in the law of the forum, it would be convenient and fair if and only if he is called up on to determine the issue of characterization based on the law of the forum. However, this theory may lead to forum-shopping by the side of the litigant.

Even though it is said that the law of the forum is the appropriate law to decide what the nature of the relationship is, Bartin makes two exceptions to his formulation. [20] That is, the determination whether a property is movable or immovable should be decided by the law where the property is situated, and in deciding the place of contracting, the law that postpones the formation of the contract longest would determine the classification.

However the theory of lexfori is criticized in situations where no similar or identical rule to the foreign rule exists in the forum. [21] This critique pertains to the fact that there are certain rules or legal relations which don't exist in another country. Thus, in such scenario the theory would fail practically. In addition, the application of this theory may result in the application of neither the law of the forum nor the law of the potentially applicable law or the lex causae.[22]

2.2.2 The lex-causae Theory

Unlike the advocates of the lexfori, Despagnet and Martin Wolf have propounded the theory of lexcausae which favors adopting the legal categories of the potentially applicable law in order to characterize.[23] accordingly, the governing law on the merits of the case has to determine the characterization. The advocates argue that, the application of foreign law to govern the legal relationship and, on the other hand, to apply the characterization of that relationship by the law other than the applicable law is indirectly denying the decision that the foreign law appliees.[24] accordingly, the legal relation or factual situation has to take its classification from the legal system to which it belongs.

This theory also is not free objections. There are at least two criticisms to this theory. First, so long as we are not aware of which the governing law is until characterization is completed classification based on this theory is a step ahead.[25] in other words, since characterization, as I mentioned in the previous section, is a vehicle in order to ascertain the applicable law, it would be arguing law. Another criticism is that when there are two potentially applicable laws to govern the matter and if it is characterized differentially by the connected states

(laws), then which one is to be adopted by the court of the forum.[26] therefore, it can be said that this theory would be tenable if there is only one potentially governing law on the matter before the court of the forum. And, thus, it has a positive impact towards the attainment of uniformity of decision on the matter at hand.

2.2.3. Analytical jurisprudence and comparative law theory

The proponents of this theory, Robel and Backet, have propounded that characterization should be governed by the analytical jurisprudence and on the basis of comparative law.[27] it is said that the solution to characterization should be governed by the general international principles and not by the law of the forum nor of the foreign law. These general principles have professedly universal application and not principle applicable to the legal system of one country only.[28]

This theory has also draw backs pertaining to its principles. As a matter of fact, there are few universal principles discovered by analytical jurisprudence which would be of assistance in the area of conflict of laws.[29] for instance, whether a property is movable or immovable is characterized by the law of the place where the property is situated has achieved a universal application. It is said that, however, since there is no water tight general acceptance for the other areas of law, it would be impractical and vague to the judges of the forum.[30] in addition, owing to the existence of clear differences in the domestic laws of different states in certain areas of law, it would be difficult for a judge to obliterate (remove) such differences with out altering them.[31] apart from these criticisms, this theory seems to secure uniformly of judgment on the merits of the case. And in effect, forum – shopping could also be disregarded if this theory is disregarded.

Generally, as I have tired to mention in the previous section characterization, as a pervasive problem, has its own impact on the out come of any litigation involving foreign element. And various theory have been propounded as a remedy to such problem. The theories discussed here – in – above, however

have their own merits and demerits. This being so, it is said that the lex-fori theory has been practiced or adopted by majority of states. [32]

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CHAPTER THREE

3. THE PROBLEM OF RENVOI AND THE AVAILABLE REMEDIES

3.1. Nature and definition of "Renvoi"

Once the court is competent to entertain a case seized before it, it has to choose the applicable law under which the merit of the case is determined. And as I have pointed in the previous chapter, before a court is determined and as I have pointed in the previous, before a court has to select characterized to its legal category for with the case cannot choose the proper law. in addition. once the matter is classified and the proper law is chosen by the forum's choice of law rules, the next of the judge is to apply the lex causae.

In disputes having all non-external elements. Municipal courts are called up on to adjudicate by referring to the domestic law of the state for the cases are of purely domestic character. For instance, if an Ethiopian citizen has died leaving movable property in the same country, it is inevitable that the internal rules of Ethiopia are to be applied provided that the deceased is died domiciled in Ethiopia. In other words, the lex causae indicated by the conflict' rules of Ethiopia. In other words, the lax causae by the conflict' rules of Ethiopia would be the internal rules applicable to a purely domestic situations.

However, incases having foreign element it is obvious that there exists a great possibility of selecting lax causae under which the issue in litigation is determined. It is in scenario that, as will be seen here-in- below, the application of proper law becomes a difficult to the judge of the forum. To exemplify the difficulty: assume A, a citizen of France dies intestate, domiciled in Italy, leaving movables in Italy. He question arises in French as to how this property is to by distribute. According to the French choice of law rules assume, the proper law to the question of intestate succession of movable is the law of the deceased's

domicile. i.e., the law of Italy. And according to the Italian choice of law rules the law of the deceased's nationality is the governing law. i.e. the law of France. Here, upon referring to the private international law of Italy, we are referred back to the law of the forum. Therefore, when the conflict of law rules of the foreign law and the conflict of law rules of the foreign country refers the case back again to the law of the forum, the renvoi or, as it is called by Germany, "Ruckverweisung" is said to exist.[1] this sending back of a case or remission to the forum creates a situation where the application of state's substantive law would be insuparable. Thus, in the above given example when the franch court would find that the case is remitted by the rules of conflict of law of Italy, the renvoi problem is said to exist.

Apart from this, it is not uncommon where by the choice of laws rule of the forum refers the matter before the court to a system of foreign law, the conflict of laws which, in turn, refers the case on ward to third legal system. To give an illustration, a French citizen, domiciled in Djibouti, dies intestate leaving movables in England, where the matter is entertained. And assume further that, according to the private international law of England the domicile of the deceased, i.e the law of Djibouti, is the governing law while pursuant to the private international law of Djibouti the law of the nationality of the deceased, i.e French law, is the proper law. Thus, when the conflict of law rules of the foreign law to which the forum refers should transmit the case to be decided by the law of a third state, renvoi I the forum of transmission or, asit is called in German term, "Weiterweisung" is said to exist.[2] the occurrence of such a problem of renvoi in its transmission from is called 'envoi'[3]

In chapter one of this thesis, I have pointed that, since the conflict of law rules of different states are designed and formulated by the law making body of each state, there is a potential disparity In the rules and principles enshrined in each state. And the process of selecting the lexcausea is operated with special reference made via the principles of connecting factors embodied in the conflict

of laws of each state. Thus, in this process of selecting the proper law, the renvoi problem arises out of the difference between the connecting factors employed by the laws of the forum and that of the law to which the connecting factor of the forum indicate.[4] hence, in the above exemplification, had the connecting factors embodied in each involved jurisdiction conflict of laws rule been the same, the renvoi problem would never have been arisen.

Generally, the circumstance that could give rise to the renvoi issue as stated by J.G. Collier is:

> *"(i) that the choice of law rules of the forum … and that of the lexcausae …. Use that same connecting factor for the legal category, for example domicile, but mean different things by it, or (ii) the choice of laws of the forum… and the lexcausae… use different connecting factor for the legal category, example, domicile and nationality"*[5]

To sum up, renvoi, In whether form it appears, i.e. either remission or transmission, and irrespective of the way how it arises, brings a situation where by neither of any state's court can apply any proper law to the issue in litigation.

3.2. The concept of 'foreign law' or 'law of a country' Vis – a – Vis the Renvoi problem.

As I have mentioned in the previous chapter, courts are required to apply the law of a certain foreign country as a consequence of special reference made by the connecting factors embodied in the conflict of law rules of the forum state. For instance, the conflict rules of a state may provide that the issue of succession to movables is governed by the law of the domicile of the deceased. Thus, this brings us to the question that what do mean by the law of the deceased's domicile or, in the other words, what do we mean by the law of a certain country or foreign law?

As it is well summarized by paras Diwan and Peeyushi Diwan law of a country may be defined under two categories.[6] first, law of a country means that body of rules under which the rights and obligation of parties are determined in cases of matter possessing only domestic elements. Secondly, apart from defining the right and obligations of the parties, it indicates the competency of domestic courts and whether the domestic laws of the forum or that of foreign is appropriate. Therefore, law of a country, in its narrow sense, means that the rules of certain country applicable only to situation whereby cases are of domestic complexion. On the other hand, it is the law, in its broad and wide sense, for it is applicable in choice of law and of courts, including conflict of law rules of a certain state. The two definition of law of a country have to be scrutinized deeply for if we take the former meaning the renvoi problem has nothing to do with it. Whereas, if we take the latter meaning we find our selves in the problem of renvoi brings in application of any state's substantive law since the conflict of law rules make an interminable back and forth references.

To go back to the hypothetical cases in the previous section, the France courts refers to the matter of succession to be governed by the Italian law. However, the case was re-referred to the forum for the conflict of law rules was included in defining law of Italy. On the other hand, had the conflict rules of Italy been excluded in defining law of country, the court would never have found itself referred back. Thus, the application and the connotation of 'law of a country' becomes the core to the rising up of the problem of renvoi. Generally, as it is stated by the problem raised by the doctrine of renvoi can be summarized in interrogatory form as follow;

> *"when the conflict laws rule of the forum refers a jural matter to a foreign law for decision, is the reference to the corresponding rule of the conflict of laws of that foreign law, or is the reference to the purely internal rules of law of the foreign system? i.e. to the totally of the foreign ,law, minus its conflict of laws."*[7]

3.3. The remedies to the problem of renvoi

In the previous section, I have tried to show what the problem of renvoi is and how it significantly affects the right of individuals. In other words, owing to the existence of numerous legal systems each possessing different conflict of laws system, rights created in one legal unit may be denied In another legal system. Hence, in order to evacuate from such problem different states adhere to different approaches or theories.

So far as Renvoi problem is concerned it was said that the different I the connotation of 'law of a country' by different states or courts gave rise to the problem of renvoi. By the same talken, the approaches or remedies to the problem still revolve on the orbit of the definition of; law of a country' or of 'foreign law.' Therefore, when we see from this aspect there are three possibilities.[8] firstly, law of a country is meant its law minus conflict of laws rule, i.e, rejecting the renvoi. Secondly, by the law a country is meant its law including its conflict of laws rule minus its conflict rule applying renvoi, i.e, single or partial renvoi. Thirdly, it is meant all the relevant law of a particular country including its conflict of laws rule and renvoi, i.e. double renvoi.

To have a better understanding of the remedies the writer will try to discuss in detail in the subsequent section. And closer analysis of the problem shows that there are four alternative propounded by different scholars and states.

3.3.1. REJECTING THE DOCTRINE OF RENVOI

One of the remedies to the problem of renvoi is rejecting the renvoi, which regards the reference to foreign law as one directly to the domestic law of the foreign country, disregarding any conflict of laws rule that are applied in that country.[9] the term 'foreign' 'law', according to this view, is defined as only the rules applicable to litigation of purely domestic character. In other words, the existence of private international law of the foreign lex causae that might be

applied, as regards choice of law rules, is totally unrecognized by the forum's conflict of law rules. Therefore, on reference made by the forum, the adoption of this remedy, to adjudicate up on the merits of the case, results in the application of the domestic rules of the foreign country, for example, rules applicable to succession, contracts, tort, property etc. thus, whenever the forum adheres to the view of rejecting the renvoi what is expected from the judge of the forum is only to ascertain the domestic rules of the foreign country and not of its rules on choice of law.

To have a better understanding of the remedy let us see the following hypothetical case. An English man dies intestate domiciled in Germany leaving movable property in England. And an action to succeed the property is brought in English court. The English conflict of laws rule refers the matter of succession to immovable to the law of the deceased's domicile, i.e. Germany. And let us further assume that according to the conflict of laws rule of Germany the law of the deceased's nationality is the governing law, i.e England. Now the forum, England refers the case to Germany, which in turn, fires the matter back to England. Therefore, since the court of the forum is rejecting the Renvoi, it automatically disposes the case by applying the internal law of Germany. In other words, the English judge will apply the rules of succession of Germany which are the governing laws in cases having pure domestic character.

Coming to the other form of Renvoi, we have seen that when a foreign country referred by the forum transmit the case on to any other third legal unit, renvoi in its transmission form appears. In such instances the disposition of the controversy still results In the application of the internal rules of the foreign country to which the matter was referred by the forum. For instance, suppose, in the above case the deceased is French. Citizen domiciled in Germany. Now the applicable law selected by the forum. I.e. England is the law of the deceased's domicile and the conflict's rule of Germany refers the matter to the law of the

deceased's nationality, i.e. France. Therefore, adopting the theory of rejecting renvoi, the forum will adjudicate by applying the internal rule of Germany. Thus, when renvoi, appears in whatever form and if rejecting renvoi is accepted, the forum will apply the internal rules of the foreign country to which it is referred by its own conflict's rule.

This remedy to the problem of renvoi is highly in many countries. For instance, most of the American courts accept this theory and apply the internal rules of the foreign country.[10] In determined the proper law these courts only apply their own conflict of laws. In addition majority of the scholars, both in America an England advocate the adoption of this theory.[11] these scholars rest up on the conclusion that foreign law is meant only the domestic rules without any recognition to the conflict of laws of the foreign lex causae.

The reason offered in favour of this argument pertains to the practical significance in its application. It is said that the circular process created by the references is avoided without getting on the mess of renvoi.[12]

However, adopting this view contradicts with the essence of conflict of laws to which it is partially designed to prevent. In the first chapter of this thesis, the writer has tried to show that uniformity of decisions is the ultimate end desired by any system of conflict of laws. In other words, the way in which an issue should be decided has to be similar every where. Therefore, such an end should not be lost at the achievement of practical significance. In order to elucidate such a drawback it is better to go back to the previous hypothetical case. The court of the forum, i.e. England, on rejecting the renvoi and as a result disposes the case by applying the internal rules of Germany to determine matters of succession. On the other hand, we have to bear in mind that there is a possibility of bringing an action before the court of Germany. In this instance, if the same action is brought before the court Germany and if the court accepts rejecting renvoi approach, then the disposition of the case will result in the application of the internal rules of

England. Therefore, here, we see that there are two governing laws for the same case, in other words, uniformly of judgment may not be attained if the renvoi is rejected.

Avoidance of forum shopping is another end desired by any system of conflict of laws. And in cases where by both involved states adhere to rejecting renvoi, forum shopping may exist. For instance, if the plaintiff ascertains that he has a right under the law of Germany, he will bring an action to the court of English. And, on the other hand, if he knows that he is a winner under the internal rules of England, he will lodge the case before the court of Germany. Therefore in such a situation the system of conflict of laws loses its essence for refers to the rejecting theory or the situation. Contradicts with the very end of private international law. And, in effect the adoption of this theory will inevitably jeopardize the right of the parties in litigation.

Generally, this remedy has its own practical significance and, on other hand, it has the aforementioned draw backs which negate the goals of conflict of laws.

3.3.2 THE DESISTEMENT OR MUTUAL DISCLAIMER THEORY.

The advocates of this theory, Vonbar and Westlake, propound that where the conflict's rule of the forum is inconsistent with the conflict's rules of the selected foreign country, the internal rules of the forum will be applied.[13] this means that when the court of the forum refers the case to be determined under the law of certain foreign country whose conflict's rule refers to the forum, then the internal rule of the forum would be the proper law.

In the course of reference by the forum to a certain foreign legal system and, in turn, sending the case back to the law of the forum, it is presumed, according to this view, that there is no applicable internal law of either states and, therefore, this gap has to be fulfilled via the internal law of the forum.[14] this means that the rational behind applying the internal law of the forum is not because of the

reference by the foreign law, but for it is presumed that no applicable law exist and, hence, the best way to get the case decided is applying the internal law of the forum. And, from this presumption, the adoption of this theory, in every case, results in the application of the internal law of the forum.

To get a better understanding of this theory, the following hypothetical case is desirable. Mr.x, a citizen of Kenya, died intestate, domiciled in south Africa, leaving movable property in both countries. An action is brought before the court of Kenya as to how the property of the deceased is distributed among his survivors. And the conflict of laws rule of the forum, i.e. Kenya, requires an application of the deceased's domicile, i.e. the law of south Africa. On the other hand, the conflict's rule of South Africa directs the question of succession to the law of the deceased's nationality, i.e. law of Kenya. In this case a gap exist for the fact that both states' conflict of laws rules disclaim to adjudicate up on the case and, thus, the internal rule of the forum will be applied, i.e the domestic law of Kenya. By the same taken, if the case had been lodged before the court of South Africa, the internal rule of South Africa would have been applied.

This theory, as it is easily grasped from the aforementioned case, only recognizes the existence of the conflict of laws rule of the foreign country.

As far as the existence of renvoi in transmission form is concerned, when the forum state adhere to this theory, still the government law is the internal law of the forum. In other words, the theory disregards the existence of transmission.[15] in general, whenever the foreign law to which the case is referred by the forum insists on denial to adjudicate or to govern up on the determination of the case, the domestic law of the forum will automatically govern.

The voice of this theory pertains to its insufficiency in obtaining uniform decision on the same issue. In other words, like that of rejecting renvoi, the outcome of the controversy may still depend on the court to which the case is brought. And it

is said that it is a loophole to the reliance of the parties right on the chance forum.[16] if this is so, one can easily grasp that the adoption of this theory may be exposed to forum shopping.

3.3.3. Single or Partial Renvoi Theory

The other solution to the problem of renvoi is single or partial renvoi theory. According to this view, the court of the forum interprets law of a country as including its conflict of law rules. In situation when a case or a legal relationship on being refered to a certain foreign lex causae is re-refered by the conflict's rule of the foreign country, it is considered to mean the domestic law of the forum state.[17] in other words, on reference back to the forum, the judgeof the forum will apply the internal law of his own country to determine the case. This means that in adopting this theory the law of a foreign country is not expected to render a direct solution on the merits of the case, rather it is allowed to indicate a legal system under which the final solution on the merits of the case is provided.

To elucidate this theory the following illustration is desirable. Suppose, Mr.A, an Ethiopian citizen, entered into a contract of sale with Mr.b. who is a citizen of china. The contract was made in Ethiopia to deliver the goods in china, i.e., the place where the contract is to be performed. Further, assume that Mr.A. fails to perform the terms of the contract. Then Mr.B brought an action before the Ethiopian court. According to the Ethiopian general principles of conflict of laws rule, say, breach of contract is to be governed by the place of performance, i.e the law china. And pursuant to the conflicts rule of china the matter is to be governed by the law of the place of making the contract, i.e., Ethiopia. Here the application of Chinese law in its broader sense results in a remission to the Ethiopia law. Therefore, if the forum accepts the doctrine of single renvoi, the judge immediately applies Ethiopia municipal law governing contracts.

Like the desistment Theory it can be said that the adoption of single renvoi in the form of remission always result in the ultimate application of the domestic law of the forum state. Unlike the desistment theory, however, the basis of single renvoi

theory is not the same. Because, in single renvoi theory the re-reference by the foreign law I directly accepted and is directly interpreted to mean the internal law of the forum. On the other hand, in the desistement theory the re-reference is not directly accepted rather the application of internal law of the forum is a way out to fill the gap created by the denial of the two states.

As far as the problem of renvoi in its transmission form is concerned, unlike that of remission cases, the ultimate disposition of the controversy results in the application of the domestic law of the third legal unit. 17.5 authority may be drived from infranotes 18 and 8. for example, let us assume, further, in the above case the defenclant's domicile is Kenya in which place the action is brought. And according to the conflict rule of Kenya, the place of making is the governing law, i.e. Ethiopia, which in turn, transmits to the laws of the place of performance of the contract i.e. china. Therefore, if the theory of single renvoi is followed by the law of Kenya, the judge applies the internal law of china governing contracts. Thus, the adoption of this solution doesn't necessarily result in the application of the internal law of the forum.

This remedy to the problem of renvoi, in whatever form it appears, involves the recognition and to a certain degree even the application of the conflict of law rules of foreign country.[18] this is because the judge of the forum after scrutinizing the foreign conflict rule, either applies its own law in case of remission or of a third legal unit in case of transmission.

This solution to the problem of renvoi has been adopted in many celebrated cases by continental courts and legislatures.[19] the decision of French cassation court in the 'Forgo' case could be cited as an example.[20]

> *"Forgo a Bavarian national, died intestate at Pau where he had lived since the age of five. The question before the French court was whether his movables in French should be*

distributed according to the internal law French or of Bavaria. Collateral relatives were entitled to succeed by Bavarian law. But under the code of Napoleon the property passed to the French private international law referred the matter of succession to Bavarian law, but the Bavarian private international law referred the matter of succession to Bavarian law, but the Bavarian private international law referred it to French law. The French cassation court accepted the remission and applied the provisions of the code of Napoleon."

However, the adoption of this method of resolving the problem of renvoi is not free from criticism. It is said that the theory, like that of the rejecting theory, aforementioned Forgo's case the court of France, on re-reference by the private international law of Bavaria, applied the provisions of the code of Napoleon. Had the case however, been seized before the court of Bavaria, it would have been applied its own internal law provided that single renvoi theory is adopted by Bavaria. Therefore, one can realize the voice of this theory as a remedy on the ultimate decision of the case. In other words, this theory makes rights of parties depend on where the action is initiated. In addition, if we assume that the two states adhere to different theories, still uncertainty in the minds of the parties may be created. For instance, if we assume that France accepts single renvoi theory and the Bavarian law adhere to disistement theory, still the ultimate decision depends on the place where the action is brought. However, when rejecting theory is employed by one of the states uncertainty may not exist. This means that the parties in litigation are in a position to predict, irrespective of the place of the forum, the law under which the matter is governed. Therefore, in this instance, uniformity of decisions could be attained. And, in effect, forum shopping would be avoided.

An other objection offered to this theory is that it involves the displacement or substitution of the conflict's rule of the forum by the corresponding rule to which the forum refers.[22] this means that as a result of the re-reference made by the conflict's rule of the foreign country the forum's selection or reference is being displaced. To this point, it is also said that the court of the forum cannot be justified for casting aside its own conflict of laws rule in favour of the foreign confilict's las being referred.[23]

Here, however, as I have tried to mention in chapter one of this thesis, different counties have their own system of law including conflict of raw rules. And these laws are legislated by the law making body of each country in its terriotory. This being so, the law making body may proved, under the contents of conflict of law rules, the circumstances when to assume jurisdiction or to cease and, the conditions when to apply its own law or forging's rule. Because the very function of conflict of laws, as we have said, is to select jurisdiction and law. Hence, conflict of laws, when we see it from its function, may case aside its own rules in lieu of that of the foreign law. And to this point as it is also we argued by ErwinN. Griswold: "after all, what is conflict of laws, unless it is a science for telling when it should cast aside its own rule in favor of one that is preferred abroad.[24?]

The other objection given for the adoption of this theory is that no logical justification can be given in considering the re-reference to the internal law of the forum or any third legal system.[25] It is to mean that when the forum selects a certain foreign law, it is taken to the entire law of the system, whereas when the case is fired to the forum back or referred on to third legal system, the reference is taken to mean the internal law.

3.3.4. Double Renvoi Or Foreign Court Theory

I have mentioned that if the forum state as least recognizes the existence of foreign state's conflict of law rules, a potential re-reference by the foreign law

might exist to the forum or onward to a third legal system. It is in such re-reference that the theory of double renvoi or the foreign court doctrine exists.

The adoption of this doctrine as a remedy to the problem of renvoi requires the disposition of the issue before the forum court as it would have been rendered if it had been presented in the foreign court to which the forum's conflict's rule indicate.[26] in other words, if the judge of the forum is refereed by his conflict of law rules to the law of a foreign country, he is required to determine the case under the law which the foreign court would apply if the case were before it. Therefore, the forum's decision on the controversy is contingent up on the potential decision of the foreign court.

In any case which involves renvoi problem, if double renvoi is adopted by the forum, it is difficult to know the applicable law. Because, it is defendant up on the principles embodied in the foreign conflict of law rules. In other words, for instance, if a case referred to a certain foreign law is remitted or transmitted, we can not be certain that the forum will accept or desist and apply its own domestic law nor will reject and apply the internal law of the foreign law. This is for the fact that the forum not only has to refer the foreign conflict's rule but also has to scrutinize the theory adhered by such conflict's rule top solve the problem.[27] hence, when the forum realizes that the conflict rules of the foreign state would reject the renvoi, then it would apply its own domestic law, and if it predicts that the foreign conflict's rule accepts partial renvoi, the domestic rules of the foreign state would be applied.[28] this means that, if the foreign court accepts the renvoi, this will lead the judge of the forum state to reject the renvoi. And if the foreign court reject the renvoi, then the judge of the forum will accept partial renvoi.

This remedy in the words of sir H.Jenner, in the case of a testamentary disposition, made by the English subject domiciled in Belgium, requires the English court to "consider it self sitting in Belgium under the particular circumstance of the case"[29.] it is said that when the connecting factor of the

forum's rule indicate a certain foreign law, the judge of the forum has to decide in the same manner as it would be decided by the judge of the foreign court. Generally, in the application of this doctrine, two processes are embodied.[30] first, the selection of the foreign law by the forum's connecting factor and, secondly, the ascertainment of the renvoi theory involved by the foreign conflict of law rules.

To give an illustration of this theory and its processes: an Ethiopian man whose domicile was Sudan died testate. The deceased, by a will left his movable property to his relatives excluding his only son. The son claimed his share under Ethiopian law. Let us further assume that an action is brought before the court of Ethiopia. And say according to the Ethiopian conflict's rule, succession to movables is governed by say the law of the deceased's domicile where as the conflict's rule of the Suden refer the matter back to Ethiopian as the deceased's nationality. As it can easily be seen from the case, when the forum refers the matter to be governed by the law of Sudan, in turn it is remitted to the Ethiopian law. Therefore, the outcome of the controversy is dependent up on, if the double renvoi theory is accepted, the fictional decision that could have been rendered by the court of Sudan. Thus, in the given hypothetical case, if we realize that the court of Sudan would apply its own internal law owing to the fact that single renvoi theory is employed; the Ethiopian court would apply the Sudanese internal law. If, on the other hand, the Ethiopian court predicts that the court of Sudan would apply the Ethiopian internal law for rejecting the renvoi is employed in its conflict's rule, the Ethiopian court would govern the matter by its own internal law of succession.

Coming to the other form of renvoi, i.e. transmission, the application of this remedy is to a certain degree complicated. In this scenario, like that of remission, the court of the forum decided the case as it would have been decided by the foreign court to which the forum referred. For instance, in the above hypothetical case assume that the estates of the

deceased are left in Djibouti in which place the action is brought. Then, when the conflict's rule of Djibouti refer the matter to the law of the deceased's nationality, i.e. Ethiopia, and Ethiopian conflict's rule transmits the matter in litigation to be governed by the law of the deceased's domicile, i.e. Sudan. Therefore, in this case if the court of Djibouti predicts that Ethiopia would apply the internal rules of Sudan, the judge of the forum applies that law. And if, on the other hand, it realizes that Ethiopia would apply its own internal rules, the same law would be applied by the court of the forum.

Generally, when a state adopts this doctrine, the outcome of the controversy is wholly contingent up on whether one of the remedies specified here-in-before is incorporated by the foreign law to which the forum refers. Hence, in this theory, the query is not all about whether any of the other remedies is embodied by the forum. Rather, it is if either of the remedies is incorporated in the foreign law. And it is said that this method of resolving the problem of renvoi has been adopted in England and it is now modern French practice.[31]

The adoption of this approach, it is submitted, will inevitably attain uniformity of decisions in any case. No matter where the action is lodged similar decisions would be rendered. In cases where the foreign law accepts single or partial renvoi and if the forum adheres to the double renvoi theory, as we have seen it, both concerned states have arrived at the same result.

In addition, even in case where the foreign law rejects the renvoi, both involved countries have ensured uniform decisions on the matter. Further, when the foreign law adopts the desistement theory, a definite and uniform decision will be secured. Thus, irrespective of where the

action is brought, the adoption of this doctrine would produce uniformity of judgments in the above three alternatives.

In addition, it could be said that the attainment of uniformity would close the door towards forum-shopping. Hence, in effect, forum-shopping could be avoided via the adoption of this theory. And, therefore, it is said that this theory would give adequate recognition to rights and duties of individuals.[32] generally, such peculiar merits or advantages of this theory are in conformity with the need for the existence or emergence of conflict of laws rules. Therefore, it is submitted, in comparison with the other remedies discussed in the previous section, this remedy to the problem of renvoi is better in serving the ends desired by conflict of laws rules.

However, it is criticized that this doctrine fails to achieve uniform decisions in case when the same doctrine is also adopted by the law.[33] this means that when the doctrine is not only accepted by the forum but also by the foreign country to which the matter is referred, the attainment of uniform decision would be at stake. In addition, it is said that, in this instance there would be any way out in which the inextricable circle could be broken.[34] because, the forum would decide in the way the foreign court would and the latter court would decide in the same way the former would. For instance, in the above example, if we consider that both Sudan and Ethiopia accept the double renvoi doctrine, as a result, we find ourselves in a trouble in which no applicable substantive law would exist. However, it is submitted, such an instance is hardly to exist in the real world and as it is well described by Erwin, Griswold:

“The world is not a checker board made up of black squares and white squares, each one with its own law and a uniform conflict of laws to govern all the moves.”[35]

The other criticism to the doctrine pertains to the difficulty of its application. It is said that in ascertaining the conflict's rule of foreign law, the forum judge would face a difficult to know which theory or remedy is embodied [36]. in addition, it is said that the doctrine subjects the sovereignty of the state adopting it. In other words, like that of single doctrine implies a submission of the conflict's rule of the forum by the conflict's rule of the foreign states.[37]

To sum up, as we have discussed, in the course of selecting the proper law, there is a great exposure or possibility to the happening of the notorious problem of renvoi. And the different states have been dealt hare – in the above four section. In addition, the theories or doctrines forwarded have their own merits and demerits. This being so, the writer has found that the available remedies are not in a position to solve the problem of renvoi completely. Nevertheless, as a lesser evil, it is submitted, the double renvoi doctrine is better than the other alternatives.

End notes – chapter three

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27. Supra not 19. p.29

28. Supra not 3.

29. supra not 20.p.65

30. supra not 10.p.75

31. supra not 28

32. supra not 10.p 83
33. Supra not, 20. p.67
34. supra not1.p.528
35. supra not 9.p. 1184
36. supra not 20.p.70
37. lbid.p. 68

CONCLUSION AND RECOMMENDATION

Apart from the application of the internal laws of the forum, there are circumstances by which courts are required to look the relevant rules of other legal system. This task happens when the issue before the court of the forum affects some fact or transaction that has a connection with a foreign system of law.

Obviously, different states have their own laws differing materially from that of another. Owing to this fact, rights acquired or protected in one legal system could be denied under another legal system. Hence, conflict of laws comes in to operation in order to reconcile the inconsistency created by the diversity of laws of different states.

With regard to the scope of conflict of laws there are three kinds of questions to be governed. First, conflict of laws defines the basis in which the court of the forum is competent to entertain a case. In order to render binding decision the court of the forum has to be competent in its jurisdiction. Jurisdiction is nothing but the power of a court to give an enforceable judgment.

The second issue addressed by conflict of laws is the question of choice of law. After the court has assured that it has jurisdictions, the next task would be selecting whether the applicable law is of the forum or of the foreign state connected to the issue. The third issue addressed by conflict of laws is a matter of recognition and enforcement of foreign judgments. It defines the circumstances under which a judgment of a foreign country is to be given some effect. And generally speaking, when the foreign judgment is a judgment of a court of competent jurisdiction, recognition will be accorded for the sake of enforcement.

We have said that once the court has assumed jurisdiction the next step would be to determine whether the applicable law is of the forum or of another country. In the course of determining the applicable laws there are so many problematic steps that can affect the out come of the whole litigation. The court seized of cases having foreign element has to first characterize the factual situation or legal relation to its appropriate legal category. Characterization is an analysis undertaken by the court in the allocation of the question raised (example, tort, contract, succession) and of the nature of each question (whether it is of "procedure" or of "substantive") in order to reveal the appropriate system of law. Generally there seems to exist uniform proposition that characterization has three aspects.

The first part deals with the subject-matter characterization. It is the determination of whether a court has before it, for example, a tort or a contract issue in order to apply the appropriate rule of conflict of laws. However, owing to the existence of different laws of different states, this aspect of characterization creates difficulty. Because, a factual situation or legal relation classified under one legal category in one legal system may be classified under different category in another.

The second aspect deals with the definition and interpretation of "connecting factor". Connection factor is a word or legal concept which indicates the proper law under which the case is determined. The court, once, it has characterized the legal relation in to its appropriate legal category, has to determine the applicable law via the connecting factor embodied in the rules of conflict laws. However, the main problem with this aspect of characterization is that different legal system may employ different connecting factors for the same factual situation.

The third aspect of characterization is the "substance procedure" Characterization. When the choice of law rules of the forum selects the proper law through connecting factor, a question arises to the extent of the selection.

This means that whether the reference made includes both substantive and procedural laws or not. Unanimity seems to exist that all maters of procedure are to be governed by the law of the forum. However, the problem is that a rule of law characterized as procedure in one legal system might be classified as substantive in another.

Generally, the manners of characterization have been a controversial issue. Some advocate that characterization should be made based on the lexfori or law of the forum while others propose that it should be based on the lex-causae or potentially applicable law. Apart from this, analytical jurisprudence is also forwarded as a basis of characterization. Generally, however, in practice all the three aspects have been characterized on the basis of the lex-fori.

Once the selection is indicated by the conflict of laws of the forum, the next task would be the application of the lex-causae or selected law. When the connecting factors indicate or refer a certain foreign law, a question arises whether the reference or selection includes the conflict of laws of the foreign country. And the inclusion of the foreign state's conflict of laws with in the reference creates the problem of renvoi. As we have mentioned different states may employ different connecting factor for the same legal category. And the renvoi problem arises as a result of the different between the connecting factor of the forum and that of the law to which the forum refers.

The renvoi problem may appear in two forums. When the forum refers the case to be determined under the law of a certain foreign country whose conflict's rule refer back to the forum, renvoi in remission from appears. And when the conflicts rule of the foreign country makes a reference onward to a third legal unit, renvoi in its transmission form appears. In legal, renvoi in what ever form it appears creates a situation in which the application of any state's substantive law becomes difficult. To solve the problem of renvoi different states adhere to different theories or approaches.

One way of approaching the problem is to reject the renvoi. According to this approaches, when ever conflict of laws of the forum selects a certain foreign law, the reference is taken to mean to the internal or domestic law only. Here, the conflict of laws of the foreign country is excluded. Hence, on reference made by the forum result in the application of the domestic rules of the foreign country. However, this theory might not attain uniformity of decisions on the same issue. And avoidance of forum shopping would be at stake. In addition, this theory makes rights of individual depend on the chance forum. Generally, this approach contradicts with the essence of conflict of laws to which it is partially designed to prevent.

Another remedy to the problem of renvoi is the desistment theory. In view of this theory, whenever a case is referred to certain foreign law whose conflict' rule refer the case back to the forum or to another legal unit, the applicable law would be the domestic law of the forum. Here, like that of the rejection theory, the attainment of uniformity of decisions and avoidance of the forum shopping would be at stake. In addition, the application of this theory has a great exposure to make rights of individuals depend on the place where the action is brought.

Therefore, this theory might not achieve the ends desired by any conflict of laws.

The third approach to the problem of renvoi Is the single or partial renvoi theory. Pursuant to this view a reference to foreign law is to mean to the whole law including conflict of laws. Here, the selected foreign law doesn't give a direct solution to the case is adjudicated. There fore, whenever a case on being referred to foreign law, is, in turn, re-referred to the forum or to the law of any third legal unit, the domestic law of the forum or of the third legal unit would govern respectively. However, the application of this theory might not secure uniformity of judgment on the same issue. And as we have mentioned it, forum shopping could not be disregarded under certain circumstances. In addition, right of individual would be contingent up on the forum where the action is initiated. Therefore, in light of the needs for conflict of laws this remedy is in a position to solve the renvoi problem.

The fourth way of approaching the problem of renvoi is to adhere to the double renvoi theory. This view recognizes the existence and application of the conflict's rule of the foreign country. And this theory requires the disposition of the case as it would have been rendered by the foreign court to which the forum refers. Accordingly, the application of this theory attains uniformity of decision on the same issue. Irrespective of the place where the action is brought, similar judgment would avoid any exposure towards forum shopping. And, it could be said that the achievement of such ends of conflict of laws would lead to an effect in which rights of the parties would never be jeopardized. However, the adoption of this doctrine might create difficulty it is employed by the states which have a connection to the

case. In such circumstance the application of either state's substantive law would be difficult.

Therefore taking in to consideration of the problem of the renvoi and deep analysis of the remedies, the writer would like to suggest that the adoption of the double renvoi theory would be better than that of others. Because, in comparison with the other remedies, the double renvoi heory has peculiar features or advantages. And these advantages or merits are in conformity with the need for the emergence of conflict of laws. In addition, the writer would like to suggest that an international instrument or treaty among state would be desirable in case the involved states adhere to the double renvoi theory.

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