

Chapter one

Conflict of law doesn't apply in all legal issues. It is applicable only in civil cases. All public laws are excluded from the jurisdiction of conflict of laws. Private international law arises only a given civil or commercial case contains a foreign element. Foreign element is a contact or linkage between a given case and the other two or more legal systems.

Connecting factors are grounds which create foreign element

There are different connecting factors which create foreign element. The first one is nationality. The second one is residence and domicile. The third one is the cause of action which happens in different countries. The fourth one is when the subject matter of the case is situated in another state. Foreign element may create a contact between more than two countries. Conflict of law may exist within a country especially in federal countries. Because, in federal states there is a dual government system. So, we can classify conflict of laws in to two. These are international and interstate conflict of law.

Natures of conflict of law

The first one is it is procedural law. Because, it's purpose is to implement the substantive laws. The second feature is its scope of application, the focus of conflict of law is civil and commercial matters. The third feature is the involvement of foreign element; the case must be containing foreign element in order to apply conflict of laws. The fourth feature is conflict of law cannot solve the problem rather it helps to select the applicable laws and the courts to entertain the case.

Causes for the problem of conflict of law

There are two reasons enable us to talk about the problem of conflict of law. The first one is the existence of different or diverge legal systems in the world. It brings different outcomes for the same cases. The second one is the

movement of people country to country. Therefore, these are the major causes for the existence of foreign element in different cases.

The development of conflict of law in Ethiopia

Currently, Ethiopia doesn't have a single codified conflict of law. In the reign of Emperor Haile Slassae, there was a draft conflict of law prepared by RenneyDavid. There was also a subsequent attempt for the preparation of conflict of law made by the Derg regime. Currently, the jurisdiction regarding with interstate conflicts or conflicts arise between the residents of different regional states is given to the federal high court. But, in legal speaking, the regional states can enact a separate conflict of law. Because, according to the constitution, the residual powers which means powers those were not given neither for federal nor regional governments are given to regional states. Both governments also have not the power to enact conflict of law according to the constitution. According to the federal courts establishment proclamation, the issues related with the enforcement of foreign judgment are submitted to the high court.

Chapter two judicial jurisdictions

Jurisdiction means a power of courts to subject persons to judicial institutions. The decision of the court given without its jurisdiction has not a binding effect. There are three types of jurisdictions. These are material (subject matter) jurisdiction, judicial jurisdiction and local jurisdiction. Material jurisdiction is a vertical division of courts based on different types or kinds of cause of action of cases. For instance, according to federal court establishment proclamation Art.11 (2B) the federal high court has first instance jurisdiction on the cases regarding with nationality. Local jurisdiction is a horizontal division of courts depending upon their location. It is a selection of courts within the same level. Judicial jurisdiction is a jurisdiction at country level. A decision given in one country without a valid jurisdiction cannot be recognized by other country. There are two major

purposes of judicial jurisdiction. The first one is to avoid forum shopping, protect the defendant from inconveniences. The plaintiff cannot abuse his position of selecting more than one court.

Theories of judicial jurisdiction

There are different theories of judicial jurisdiction forwarded by different scholars. These theories try to answer the questions like what shall be the grounds to claim judicial jurisdiction on the cases and things. In addition to this, these theories try to specify the power of the courts.

The power theory

The power theory says that the courts of any country shall have judicial jurisdiction within the territory of that country. If the defendant is physically present within that territory, courts of this country can exercise its judicial power. The duration of the existence of the defendant in that country doesn't matter. If there is a sufficient time to serve summon for the defendant within the territory of the state, the courts of that country shall have judicial jurisdiction. Due to the doctrine of sovereignty, the power of these courts doesn't extend in to another country. The power theory is not only applied on the nationals of that country. However, it includes anyone who attained that country. England is the most known country by using this theory. The main problem of this theory is it affects the air transport. Because, the passengers may be arrest when they transit to other country on the airport. If the defendant unwilling to receive a summon, the court entertain the case without him.

The minimum contact theory

This theory was developed by American jurists. It was proposed in order to fill the defects of the power theory. In the power theory, the judicial jurisdiction of the courts doesn't extend out of the territory of that country. But, the focus of this theory is not the physical existence of the defendant in

the territory of the country. Rather the court needs some kinds of relationship between the defendant and that country. This minimum contact may create by residence, nationality, contractual relationships and ETC.

The fairness theory

According to this theory, the state which is more just and fair for the parties has a judicial jurisdiction over the case. It doesn't matter whether the defendant is a domiciliary, resident of that country or his physical existence. Before starting the proceeding the courts should examine whether the forum is the appropriate place for the parties and witnesses or not. With the regard to cost, language and other factors. The shortcoming of this theory is emanating from the term fairness. It is very subjective. Even the court thinks to give a fair decision; it may be unfair on the side of the parties.

Classifications of judicial jurisdiction

There are different classifications of judicial jurisdictions given by different persons. We can classify judicial jurisdictions into three. These are general, specific (alternative) and exclusive judicial jurisdictions.

General jurisdiction

In such cases, the courts have the power to adjudicate any type of cases based on the residency, nationality and domicile of the defendant. It is more focus on the personal attachment of the defendant with the country rather than the type of the case.

Specific (alternative) jurisdiction

In such cases there are additional grounds to determine the jurisdiction of courts. For instance, in contract cases place of conclusion and performance may be deferent.

Exclusive jurisdiction

In this case only that country courts have jurisdiction on the case. For instance in Ethiopia, there are some cases exclusively given to Ethiopian courts. Like cases relating to the immovable property. In such time the parties may not agree to the contrary and the decision given by another court cannot be enforceable in Ethiopia. Because, the conflict law of Ethiopia prohibits foreign judgment on such matters. But, it is not applicable for general and specific types of judicial jurisdiction.

Limitations (Exceptions) of judicial jurisdiction

Even if the court has a jurisdiction on a certain case, the court may transfer the case in to other jurisdictions due to the following reasons.

Forum non convenience

It is the first exception for the ordinary exercise of judicial jurisdiction. This exception is served for the defendant. The defendant may apply to the court in order to transfer the case in to other jurisdictions that are more convenient to him. The power either to accept or reject the application made by the defendant is the discretion of the forum court. The decision to suspend the proceeding doesn't have the effect of *res judicata*. If the case is not properly entertained by the forum court, it may be reinstated in the court which is going to see the case. To suspend the case, the forum court shall check the presence of sufficient reason and the existence of another convenient court.

Pendency

It is the second exception of judicial jurisdiction. Pendency may occur when the courts of two different countries precede a similar case at the same time. There are two rules to determine the court which has a jurisdiction on that pending case. The first approach is the first seizing approach. The court which seizes the case at the first place will continue to hear the case. This means the court which is firstly accept the application of the plaintiff has a

jurisdiction before the other courts. Art.33(4) of the draft conflict law says that where proceedings involving similar question of law and fact between the same parties are brought in the Ethiopian and in foreign courts, the Ethiopian court shall of its motion stay its proceeding until such time as a jurisdiction of the foreign court first seized is established. For the purpose of this section, the court first seized shall be the court before which the action is first instituted and a file number is given there to.

Austin jurisdiction (by the parties' agreement)

This exception is common in contractual matters. The parties may agree on their contract about the court which has a jurisdiction on their case. The chosen court by its discretion may accept or reject such kinds of selection. The court shall examine the validity of such agreements based on public policy. This exception is not limited in contractual matters. It also applies for other cases. For instance, the defendant may express indirectly his intention to be bound by the decision given by the court. This means as long as the defendant appears before the court to continue the proceeding, his appearance is considered as an acceptance of the jurisdiction of that court. However, the defendant can come to the court and raise absence of jurisdiction as a preliminary objection.

Jurisdictional or diplomatic immunity

This is the last exception of judicial jurisdiction. It is a part of international law. For instance, the Vienna Convention offers some kind of immunity for the diplomatic communities of each country. But, all diplomatic community has not equal protection. The immunity given to the diplomats is also different according to the countries' relationship and their agreement.

To conclude, these exceptions of judicial jurisdiction are not cumulative. The existence of one of these exceptions may bring a change on the jurisdiction of the courts.

Judicial jurisdiction in Ethiopia

There are different possibilities for the existence of conflict on judicial jurisdiction in Ethiopia. The first probability is related with its international contact. It refers the connection of Ethiopian citizens and residents with other countries citizens and residents. It may a source of conflict of judicial jurisdiction at international level.

The second one is interstate relations, as long as Ethiopia has a federal governmental arrangement; there is a dual court system in the country. So, there might be happen judicial jurisdiction between different regional courts due to the conducts of their respective residents.

According to AllenSadler, there are three grounds of judicial jurisdiction in Ethiopia concerning with jurisdiction in personem. The first one is if the person is an Ethiopian national or domiciliary: nationality in Ethiopia is decided according to Art.6 of the constitution. Domicile is also by the provisions of the civil code. The nationality and domiciliary of the artificial person is decide by the place where they acquire their legal personality. The second ground is if the defendant is expressing his intension to be bound by the decisions of the Ethiopian courts. This consent may indirectly by conduct. For instance, _submitting statement of defense on the merit of the case.Contractual agreement of the parties is another expression of the parties' intension to accept the jurisdiction of Ethiopian courts. The third ground is an act which is a subject matter of the suit is occurred or situate in Ethiopia: for instance, if the contract is concluded in Ethiopia; if the marriage is concluded in Ethiopia.

According to AllenSadler, in the cases of property, the jurisdiction of Ethiopian courts is determined by the _situs of the property. _Situs means the place where the property is situated. If the property is found in Ethiopia, the Ethiopian courts have judicial jurisdiction.

In the Federal courts establishment proclamation, there are some provisions that dealing with about conflict of law cases. These are: Art.5 (2), 5(4), 11(2 A) and 11(2 C). Some of these provisions are stated about interstate conflict of law cases. For instance, Art.5 (2) of this proclamation says that a dispute arising between residents of two or more regional states. It shows resident is considered as a ground of judicial jurisdiction for interstate conflict of laws. But, this provision is not applicable for properties located in different regions. Because, it says “where the parties are the residents of different regions”.According to the cumulative reading of Art.11 (2 A) and Art. (2 C) of this proclamation, the federal high court has a first instance jurisdiction on the cases concerning with the applications for the enforcement of foreign judgment and any other cases which contain foreign element.

Chapter three choice of law

Choice of law is the second element of conflict of law. The main concern of this chapter is how to recognize foreign laws by the courts which have a jurisdiction on that case. Or how to select a specific law among different laws which might be apply for that case. Theories of choice of law, characterization and the concept of renvoi are the major concerns of this chapter.

Theories of choice of law

There are different theories of choice of law.

The first theory is the nationality theory: according to the nationality theory, in the first place the government enacts laws to govern its nationals. However, if the parties are foreigners, the forum court is not applying the laws of that country rather the laws of the foreigners. This means the laws of a particular country shall apply only its citizens any where they live.

The second theory is the location of legal relation theory: the main feature of this theory is it regards conflict of law as a part of international law. It says

every country is under international obligation to apply and enforce laws of foreign countries. It is against the view that private international laws are parts of the domestic laws of the country. In this theory, the procedures for selecting a given foreign law are not determined. This means the theorists not forwarded the mechanism how we identify the applicable law from the laws of different countries. It is the main criticism of this theory.

The third theory is the committee theory: unlike the location of legal relation theory, according to the committee theory, private international laws are not part of international law. Any country has absolute jurisdiction on its territory. This theory gives more emphasis for the country's sovereignty. The courts use the laws of the country for the cases even involving foreign nationals. Any individual who is present in the territory of that country is subjected to the laws of the country. According to this theory, foreign laws are not enforced by the courts of another country as a matter of obligation. But, there is some space for the use of foreign laws in the countries which follow committee theory. However, it is not because of international obligation rather by committee or recognition given by that country in order to strength international relationship and to protect the interest of their citizens.

Characterization

Characterization means procedural steps to identify the applicable laws (lexcosa) for a certain case. Sometimes, the parties may submit to the court which has a judicial jurisdiction a case that contain foreign element involving three or more countries. If the parties in dispute are agree on their contract about the applicable law for their case, no need of the court selecting other law as long as the choice of the parties is not contrary to the public policy.

There are three stages of characterization. The first stage is primary characterization: placing the cause of action in its appropriate legal category. There are different classifications of laws. For instance, land law, family law

succession law ETC. the laws classified according to the conflict law of the country which have a judicial jurisdiction.

The second character is identification of connecting factors: it is focus on the factors which create a connection between the cause of action and the applicable law. These connecting factors are derived from the conflict law of the forum country. Place of formation and performance of the contract, the last domicile of the deceased person, place of celebration of marriage and ETC are some examples of connecting factors.

The third stage is determining the applicable law for that case. If the connecting factor is more attachment with the Ethiopian laws, the forum court applies the laws of Ethiopia. The court shall determine based on the conflict law of the forum country. For instance, in succession case if the last domicile of the deceased person is Sudan, the Ethiopian courts shall apply the laws of the Sudan. Because, the Ethiopian conflict law says that for succession cases the connecting factor is the last domicile of the deceased person. The question here is which procedural law is applied by the court whether the Ethiopian or the Sudan procedural law. Some scholars say that the court shall follow the procedural laws of the foreign country. Because, most of the rights and duties of the parties are stipulated in the substantive part of the law, so, if the court uses the procedural laws of the foreign countries, it may not affect the parties' interest. Other scholars also argue if the court apply the procedural laws of the foreign country, it may violate the sovereignty of the forum country.

The second question is if the forum court decide to apply the foreign laws, which foreign laws shall apply whether it include the conflict laws of the foreign countries or not. If the court applies the all laws of the foreign country including the conflict laws, it may occur the problem of renvoi. Renvoi means sending back of the case to the primary country or to the other third country. It is a vicious circle without resolving cases. There are

two types of renvoi. These are remission and transmission. For instance, there is a contract between two Ethiopian nationals to sale the immovable property located in Mali. The contract is formed in Kenya. Unfortunately, a dispute arises between the parties and the case is submitted to Ethiopian court. The court examines the case and transfer the case to the Kenyan court. Because, according to the conflict law of Ethiopia, for contractual cases the applicable law is the law of the place where the contract is concluded. The Kenyan court may resend the case to Ethiopia. Because, the conflict law of Kenya also says for contractual cases the applicable law is the law of nationality. In such cases remission will happen. Remission is always between two countries when the case is sending back to the primary countries. In the same case, the Kenyan court may transfer the case to Mali if the conflict law of Kenya stipulates the place of the property as a ground to entertain contractual cases. In such scenarios transmission will occur.

Solutions of renvoi

There are three mechanisms to resolve the problem of renvoi. These are: rejecting the renvoi (internal law) theory, single renvoi (accepting the renvoi) theory and double renvoi.

Rejecting renvoi (internal law) theory

According to this theory, the foreign law shall be interpreting as an internal law of that foreign country by excluding its private international laws. For instance, in the above case, by assuming that if the case submitted to the Ethiopian courts and the court select the Kenyan law for the given case, the court shall apply only the substantive or ordinary laws of Kenya by excluding the conflict of laws of Kenya. The main purpose of this theory is to avoid complexity.

Single (accepting) renvoi theory

In this theory, foreign law means all laws of that foreign country including its conflict of laws. For instance, based on the above example, if the case is submitted to Ethiopian court, the court may determine the Kenyan law is the applicable law for this case. In such circumstances, the applicable law means all Kenyan laws including its conflict of laws. However, if the Kenyan law sending case again to Ethiopian laws, the Ethiopian courts shall apply its domestic laws. The court shall not refer the case again to the Kenyan laws.

Double renvoi

According to double renvoi theory, the judge in the forum court shall determine the applicable law by placing himself on the chair of the foreign judge. For instance, in the prior example the case is submitted to the Ethiopian court. The judge shall think that if I were a Kenyan judge, which law will be applicable for this case. The main short coming of this theory is there might be happen nonstop reference of laws of one country to another country like a pendulum especially if all countries those laws can be applicable to the case follow double renvoi theory. In other situations, if the forum country follows double renvoi theory whereas the foreign country follows reject renvoi theory, the laws of the forum country will be apply. If the forum country follows a single renvoi theory whereas the foreign country follows double renvoi theory, the laws of the foreign country will be apply. The reverse is applicable for the laws forum country. Incidental questions

Incidental questions refers to a subsidiary legal question that might exist the main legal issue unless the incidental questions are answered the forum questions might not be answered. Therefore, the court shall decide all the incidental questions first.

Restrictions on the application of foreign laws

The first restriction on the application of foreign laws is public policy: it refers to the moral, economic, social and political issues of once country to public

law of foreign country. For example, criminal law, labor law and tax law. The second restriction is proof of foreign law: 1 foreign law as the question of fact. 2 question of law as question of law.

Choice of law in Ethiopia

The federal courts establishment proclamation empowered the federal high court to entertain conflict matters. Regarding with choice of laws it says nothing except federal courts may use or refer the both the federal as well as the regional laws.

Chapter four recognition and enforcement of foreign judgment and arbitral awards

There are different advantages of giving recognition for foreign judgments and arbitral awards. The first one is insuring committee giving respect to other states. It serves for the international harmony or the relationship between the countries. If we respect the judicial acts of other countries, these countries intern respect the judicial acts of our country. The second one is saving the time and costs of the courts, the relitigation of the same cause of action increase the cost of the court. Because, it brings more files. The third one is respecting the rights and interests of the judgment creditors, especially if the judgment debtor may not have assets or property in the rendition forum.

It contains two terms. These are enforcement and recognition. Foreign judgment will be only enforced if it is first recognized by the country which submitted the enforcement request. But, there are circumstances foreign judgments may not require enforcement. This means the recognition only may be enough. In Ethiopia, the recognition and enforcement of foreign judgments and arbitral award is governed by the provisions of the civil procedure code from Art. 456 to 461. In this chapter, the code used the term execution. But, the term recognition is not applied. However, the scholars agreed the term recognition is impliedly incorporated under this chapter. Because, the term execution is include the recognition. Recognition is the precondition for enforcement or execution of foreign judgment.

Art. 456. Principle

(1) Unless otherwise expressly provided for by international conventions, foreign judgments may not be executed in Ethiopia except in accordance with the provisions of this Chapter. The only country which Ethiopia is signed a treaty in this regard is Djibouti. Reciprocity is one requirement in Ethiopia to give recognition for foreign judgments.

(2) No foreign judgment shall be executed in Ethiopia unless an application to this effect is made.

(3) An application under sub-art. (2) Shall be made to the division of the High Court on circuit in the TeklayGuezat where execution is to take place.

Art. 457. Form of application An application for the execution of a foreign judgment shall be in writing and shall be accompanied by:

(a) A certified copy of the judgment to be executed; and

(b) A certificate signed by the President or the registrar of the court having given judgment to the effect that such judgment is final and enforceable.

Art. 458. Conditions for allowing application Permission to execute a foreign judgment shall not be granted unless

(a) The execution of Ethiopian judgments is allowed in the country in which the judgment to be executed was given.

Note: There are some circumstances which are reciprocity is not considered as a criteria for the recognition of foreign judgment. For instance, the judgment creditor is an Ethiopian national. Reciprocity shall be presumed until the contrary is proved by the parties. But, currently in many countries this reciprocity requirement is repealed by several international conventions. Because, by the disagreements of the politicians, the interest of the innocent parties should not be affected.

(b) The judgment was given by a court duly established and constituted.

(c) The judgment-debtor was given the opportunity to appear and present his defense.

Note: this opportunity and other procedural rights of the judgment debtor shall be given in accordance with the law of the rendition court.

(d) The judgment to be executed is final and enforceable.

Note: Final means the judgment given in the foreign court shall not be subject to any kind of review including appeal before the foreign court. The other element of this provision is also the enforceability of the judgment given in the foreign court in

Ethiopia. All foreign judgments are not enforceable in Ethiopia. Because, the countries have differences on their substantive and procedural laws according to their legal system. For instance, countries may follow different approaches regarding with the remedies of nonperformance of the contract.

(e) Execution is not contrary to public order or morals.

Note: Currently, the working language of the federal courts is Amharic. Even if translation of the foreign judgment is not included as a requirement under this code, the judicial practice show that foreign judgments shall be translated in to Amharic and the translation must be verified by authorized translation centers.

Art. 459. Procedure

(1) The court to which the application is made shall enable the party against whom the judgment is to be executed to present his observations within such time as it shall fix.

(2) The court shall decide whether pleadings may be SL

(3) In cases of doubt the court may suspend its decision doubtful points have been clarified.

Art. 460. Decision

(1) The decision shall be made on the basis of the application unless the court for some special reason to be recorded to hear the parties at a hearing which it shall fix.

(2), the court shall at the same time decide on costs.

(3) Where the application is allowed and permission to execute granted, the foreign judgment shall be executed in Ethiopia though it had been given by an Ethiopian court.

Art. 461. Enforcement of foreign awards,

1. Foreign arbitral awards may not be enforced in Ethiopia unless:

(a) Reciprocity is ensured as provided for by Article 458 (a);

(b) The award has been made following a regular arbitration agreement or other legal act in the country where it was made.

(c) The parties have had equal rights in appointing the arbitrators and they have been summoned to attend the proceedings;

- (d) The arbitration tribunal was regularly constituted;
 - (e) The award does not relate to matters which under the provisions of Ethiopian laws could not be submitted to arbitration or is not contrary to public order or morals; and
 - (f) The award is of such nature as to be enforceable on the condition laid down in Ethiopian laws.
2. The provisions of the preceding Articles shall apply by analogy when the enforcement of a foreign award is sought.

Chapter five contractual obligations

Contract is a general term by its nature. There are different kinds and stages of contract. For instance, there are general contract and special contracts. Under special contracts there are consumer contract and individual employment contracts. There are also formation and performance stages of contract.

Rules on the general contract

According to the jury's prudence and state facts contracts containing foreign elements are governed by the following general rules.

1. The principle of party autonomy, contract is all about the agreement of the parties. Under their contract the contracting parties may determine the jurisdiction and the appellate law for their case. But, all agreements on the selection of the applicable law may not be effective. In some cases certain agreements may disqualify. Public policy reason is the major possible ground to disqualify the party's agreement on applicable law. The other exception of party autonomy is an agreement on the contract related with the immovable property. Immovable properties always governed by the lex-situs (by the law of the place where the immovable is found). In such cases the law of the situs country shall be apply irrespective of the party's agreement. The

third exception is even if the parties have the freedom to select the applicable law on their case, most countries requires that there must be some kind of connecting factor between the parties and the country which law is selected by the parties. For instance, the draft conflict rule of Ethiopia under Art. 72 says that in addition to the five connecting factors which will be stated in below, the parties may choose the law governing the substance of their contract based on the law of the place which reasonably these connected to the matter.

The governing law in default of choice of law by the parties the applicable law is the law of the place which the contract is most closely connected or has most significant relationship. The following are indicators of significant connections. These are the law of the nationality of the parties; the law of the domicile of the parties; the law of the place where the transaction was made; the law of the place where the subject matter is situated and the law of the place where the transaction or the contract is to be performed. If all or most of the above five indicators of most significance connection are fulfilled, it is the discretion of the judge to select the most highly possible connecting factor.

Terminologies of choice of law

Lex loci contractus: the law of the place where the contract is performed. Lex loci celebrationis: the law of the place where the marriage was concluded. Lex loci delicti: the law of the place where the tort was committed. Lex domicile: the law of the domicile of the party. Lex situs: the law of the place where the property is situated. Lex fori: the law of the forum. Lex loci laboris: the law of the place where the job is done or the law of the place of work. Lex personalis: the personal law of the parties. Personal law to mean either the nationality law, law of domicile or law of the residence of the parties. In continental legal system, it may be refers to the national law of a

person. While it has the meaning of law of domicile in the common law legal system.

Rules on the special contracts

Due to their nature, Most of the world countries provide special rules to govern these kinds of contracts. This means in both consumer as well as individual employment contracts the parties do not have the same bargaining power. So that these conflict of rules are found to protect the interest of the weaker party. If we let the parties to be governed by the general rules of choice of law, the stronger party may influence the interest of the other party. For instance, under the employment contract, there are the employer and the employee. The employer is financially very stronger than the employee. This financial power give to the employer an advantage over the employee to made the terms of the contract on his favor. The same is true for consumer contracts.

According to the general jury's prudence, the choice of law by the parties on the labor contract is respected with some preconditions. The main precondition on the contracting parties regarding with the selection of their own laws on the labor matters is the selection or choice of law by the parties shall not be deprive the rights of the employee that provided under the law of the place of work. In Ethiopia, the right of the parties on the selection of the applicable law for their respective case is excluded by the cassation decision regarding with the labor matters.

In the absence of selection close on their contract, the law of the work place is applying.

Art. 76(1) of the draft conflict proclamation is says that consumer contracts are contracts for goods and services which are for the current personal or family consumption or use of consumer which are not connected with the professional or business activity of the person. In the consumer contracts the

applicable law is lex-locy domicile of the consumer (the law of the place where the consumer is domiciled).

Regarding to the stages of contract, countries may stipulate different special rules on the formation and performance of the contract. For instance, for the valid formation of contract, the conflict law of the forum country may stipulate the formality requirements of the contract shall be comply with the lex-locy-contractus (the law of the place where the contract was concluded).

Chapter six choice of law concerning with tort

By referring what the conflict law of the forum country is says, the rules of choice of law concerning with tort fall either one of the following rules.

The first one is lex-fori (the law of the country where the tort is made). For instance, if the case is submitted to the Ethiopian court, the court will apply the Ethiopian tort law without considering both the place where the tortuous act was committed and the place where the injury was sustained.

The second one is Lex-Locy-Delicti (the law of the place of the wrong). The place of the wrong is constituted both the place where the tortuous act was committed and the place where the plaintiff sustained the injury. But, this rule is very ambiguous and difficult to apply. Because, there is a probability of the above two elements may occur in the different countries. There are different approaches to solve this problem. The first one is selecting the law of the place where the tortuous act is committed as a governing law. The second one is on the opposite by disregarding the place of the commission of the act, applying the law of the place where the damage is occurred. The European Union predominantly follow this approach particularly Lex-Locy-damnum (the law of the place where the damage or the harm is occurred). But, there are some exceptional circumstances the law of the place where the tortuous act was committed might be apply. The Third approach is giving an option to the plaintiff to select either the law of the place where the act is

committed or the law of the place where the injury is sustained. According to this approach one of the two laws may be apply depending upon the choice of the plaintiff. In Ethiopia, according to Art. 82 of the draft federal proclamation on conflict of laws, extra-contractual-liabilities are governed by the laws of the place where the damaging act occurred.

The third approach is the law that has significance relationship with the case; this approach is broader than the second approach. Because, this approach consist additional grounds to select the applicable laws. The following laws are presumed to have significant relationship with the tort. These are the law of place of injury, the law of the place where the act is occurred, the law of the domicile of the parties, the law of residence and nationality of the parties. For instance, for the product liability, the law of the place of the common domicile of the parties is applying. In default of the common domicile of the parties, the law of the domicile of the victim will be applicable. USA followed the third approach to select the applicable law for tort cases.

Chapter seven the rules on choice of laws regulate issues connecting with immovable, movable and intangible or incorporeal property

Unlike the rest legal issues in the cases related with the properties, both primary and secondary characterizations are determined by the *lex-situs* not by the law of the forum. Here the type of the property which is a subject matter of the case will be determined by primary characterization in accordance with the *Lex-Situs*.

We can classify the types of property as immovable, movable, corporeal, incorporeal, tangible, and intangible and so on.

Choice of law on immovable property

It is a universally accepted principle that the *lex-situs* governs all questions relating to immovable property. This means the dispute of the parties may

arise from different matters. For instance, issue of capacity, issue of mortgage ETC. so, the forum court shall determine the rights and duties of the parties arising out of the above and other kinds of questions according to the law of the immovable property is situated.

Choice of law on movable property

There are four approaches that deal with the issue of lex-causa in movable property.

1. The lex-situs theory (The law of the place where the movable is situated), the proponents of this theory suggested that both movable and immovable properties shall be treated similarly. This means the questions relating to the movable property are answered in the same way as immovable property by the lex-situs. The main justification of this is the Lex-Situs is the mostly connected law than other laws with any kind of property. But, this theory has its own criticisms. Unlike the immovable properties they can be shifted easily from one place to the other. It may also create some problems. For instance, if one property transfer from one country to another within short period of time, it will be changed the applicable law as well as the judicial jurisdiction concerning of that property.
2. Domicile theory (Application of the law of the domicile of the owner). This theory was developed on the short comings of the lex-situs theory. According to this theory, the case is sets not in accordance with the lex-situs rather based on the domicile of the owner of the property. Because, more of the movable properties are situated at the place where the owner is domiciled.
3. Lex-Actus theory (Application of the law of a country where the transaction regarding the movable takes place). This theory proposes the place of transaction as a ground to choice the applicable law on the movable properties by disregarding both lex-situs and domicile of the

owner. The main criticism of this theory is sometimes the place of the transaction of that movable property may not have a considerable connection with the transacted property. For instance, the parties may conclude a sale contract by chance at Dubai on their vacation even if the property is found in Ethiopia.

4. The proper law of transfer (the law the country with which the transfer of the movable property has significant connection. This theory says that a law which has more significance connection with the movable property will govern the matter or to be the applicable law. It is the most general theory than the previous theories. Because, the phrase "significance connection" is not satisfactorily explained. For instance, the theorists stipulate *lex-sightus* as one of among those connecting factors. But, it is not an end just one example. They also accept other factors as a significant connection.

Succession to movable and immovable property

1. Testacy

Formal validity of will. The formal validity of will is decided as per:

1. The law of the place where the will was made.
2. The law of the domicile of the testator when the will was made or at the time of death.
3. The law of the nationality of the testator either at the time of execution of the will or death.
4. The law of the residency of the testator either at the time of execution or death.

Substantive validity of will, it is governed as per the personal law of the deceased. Personal law may be either national law of the person in continental legal system or law of the domicile of the person in the common law legal system.

2. Intestacy

1. Unitary principle of succession, all questions relating to the succession of both movable and immovable properties is governed by the personal law of the deceased.
2. Cession principle of succession, it is a widely accepted principle. It states that succession to immovable property is governed by the *lex-situs*. While, succession to movable properties is governed by the personal law of the deceased.

Theories of choice of law on intangible properties.

Chapter eight statuses

There are different kinds of statuses. For instance, marriage creates a status being a husband and wife. Capacity is another source of status. In the common law approach, the applicable law is the *lex-domicilii* of the party. But, in the civil law countries, the applicable law is the national law of the party who challenges his capacity. The federal draft conflict law applies the personal law of the party for natural persons. It is not clear what personal law is the applicable law. For the body corporate the law of the place of incorporation will be applicable.

If the issue is concerned with formal validity of marriage, the connecting factor or the applicable law is the *lex-loci-celebrationis*. In principle, characterization is determined by *lex-fori*. But, regarding to marriage to determine the validity requirements as essential or formal there are different experiences. Some countries apply *lex-loci-domicilii* and some others also apply *lex-loci-celebrationis*. In the issues concerning with the essential validity requirements of marriage, in the civil law countries, the applicable law is the law of nationality. But, the common law countries dealing such matters most of the time based on the law of the domicile. Some countries prefer the matrimonial law or the law of the common domicile of the spouses. There is a unique approach followed by United Kingdom it is called “ante nuptial domicile test”.

It is basically related with capacity. For instance, if the issue is about the capacity of the husband, the applicable law is the law of his own domicile country not the law of the common domicile of the spouses. Because, the spouses may have their own different domiciles.

Summary

Personal status as regulation of family and marriage and the widely accepted rules governing jurisdictional and choice of law in this regard. We have particularly seen the situs to be important point of contact to find the applicable law. In this connection, the place given to nationality and domicile in different countries have been seen.

These are formal and substantive validity of marriage. It has been reflected that it is a universally recognized rule that formal validity of marriage shall be governed by the *lex loci celebrationis*. Hence a marriage validly celebrated at a certain place shall also be valid in other places.

The other important issue related to validity of marriage is essential validity. This raises matters like capacity, consent and other substantive requirements that must be fulfilled before couples conclude a valid marriage.

As to the essential or substantive validity of marriage, there is no such consensus. Some countries use the test of common domicile (matrimonial domicile).while others prefer to look at the ante nuptial domicile (dual domicile test) of the future spouses to determine whether the parties fulfilled substantive requirements of a valid marriage.

For various theoretical and pragmatic reasons stated in the discussion use of the common domicile is shown to be preferable in the context of Ethiopia. Among the relevant substantive issues of legal capacity to marry that may be determined by the common domicile of the parties we have tried to cover: age, consanguinity and affinity, consent and bigamy.

The other relevant issue in relation to marriage is the choice of law that regulates its effects. These effects could be classified in to personal effects and pecuniary effects. As we have seen these effects or incidents of marriage i.e., those rights and duties of the spouses are, as a rule, governed by the common personal status of the spouses during the lifetime of the marriage. In most instances, this law is the common matrimonial domicile of the spouses.

The termination of marriage could be ushered by divorce and this could raise various conflicts of law issues. There are two choices of law views: the Common Law and the Civil Law. In the U.S as well as in the Commonwealth the rule is well

established that the divorce court applies its own law to the substantive requirements of divorce that seems sufficient and reasonable so long as the principle prevailed that the parties' matrimonial domicile is the basis of jurisdiction.

The second view has a startling point in almost all laws of the civil law orbit –the parties common personal law applies. This is most of the time the last (or the predominantly lived) common domicile of the spouses.

Chapter nine agencies, partnerships and companies

In this unit, the main point of focus was choice-of-law rules relating to agency, partnerships and corporations in the field of contract. Primarily an agency relationship can give rise to three choice-of-law problems: namely, what law should be applied to determine the rights and duties as between (1) the principal and agent, (2) the principal and some third person on account of one or more acts by the agent, and (3) the agent and the third person. When an agency relationship is created the obligations of the principal and agent to each other is determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties and the transaction. This state is selected by a process essentially similar to that employed in the case of a contract.

This unit has tried to cover issues that would arise in relation management and liabilities of partners and the partnership. We have seen that the rights and duties owned by partners to each other are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the partners and the transaction. This law is selected by application of the rules governing choice of law in contract. Partnerships give rise to much the same choice-of-law problems as do simple principal-agent relationships.

We have also dealt with the problem of what law will be applied to determine the rights and duties which arise between the partnership and the partners on the one hand and some third person on the other because of one or more acts done on behalf of the partnership by a partner or other agent. On these counts, the law selected by application of choice of law rules governing contracts, determines whether the agreement amounted to a contract between the partnership and the third person and the rights created thereby.

Concerning share companies, we have raised several issues relevant to the subject. These are issues related to the governing law in relation to creation and recognition of corporations, liabilities of the corporation in relation to contacts and extra contractual liabilities entered in its name and the like. In order to incorporate validly, a business corporation must comply with the requirements of the state in which incorporation occurs regardless of where its activities are to take place or where its directors, officers or shareholders are domiciled.

Whether the existence of a corporation has been terminated or suspended is

determined by the local law of the state of incorporation. The termination or suspension of a corporation's existence by the state of incorporation will be recognized for most purposes by other states. The state which incorporates the corporation may terminate or suspend its existence.

The rights and liabilities of a corporation with respect to a third person that arise from a corporate act of a sort that can likewise be done by an individual are determined by the same choice-of-law principles as are applicable to non-corporate parties. A corporation's rights and duties under a contract are determined by the law governing choice of law in contract. If an agent of a corporation, while acting in the course of his employment, commits a tort, the law governing extra contractual liabilities determines whether the corporation is liable for the tort and the extent to which it is liable in damages. Likewise, the validity of a transfer by a corporation, or to a corporation, of an interest in land or in a chattel is determined by the law selected by application of the rules governing transfer of rights in property.. The choice-of-law rule applied to determine whether a transfer is in fraud of creditors will also be the same whether the transfer was made by a corporation or by an individual.

Summary

There are two types of contracts in the agency relationship. These are internal and external contracts. The internal relationship is creating between the principal and the agent. It may also create by the law in addition to contract. The external relationship is between the agent and the third party. Since agency is a part of contract, the choice of law rules which are applicable in the contractual matters also in similar apply here.

Choice of law in business organizations

The choice of law which is discussed here is concerned only with the internal affairs of the corporation. With regard to the relationship with the third parties, we apply the general rules of choice of law stated under chapter five-eight. The applicable law for their internal relationship is the law of incorporation.