

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

UNDERGRADUATE LAW NOTE IN CONFLICT OF LAWS

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KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

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MORE DISCUSSIONS ON MARRIAGE.

Conflict of Laws is a very interesting subject. Initially frustrating... but gets demystified as the exams approach. What matters most is the understanding of the course.

Pardon my informal approach, failure to reference the cases and notes, typos (where any) and grammatical inadequacies.

INTRODUCTION:

:: A conflict of laws situation arises where a civil case before the forum court has a foreign element. Maybe one of the parties is a foreigner or the facts occurred in a foreign territory. In essence, the case is amenable to more than one law.

:: Due to global interaction among peoples, (of different races, values and laws) situations arise where the parties or the transaction can be subjected to more than one law.

:: The aim of conflict of laws is to select the most applicable law and protect the reasonable expectation of parties to the transaction.

:: Historically, special foreigner's courts (like the court of Staples and Piepowder) were established to adjudicate upon issues with foreign element(s).

:: Savigny noted that each legal relation has its connecting factors which includes; domicile (Lex domicili), location of transaction (lex situs), location of courts (lex fori), and so on. These shall be discussed later.

SOURCES OF NIGERIAN RULES OF CONFLICT OF LAWS¹.

1. Nigerian Legislation.
2. English Law.
3. Local and foreign Case law (Staire Decisis).
4. Public international law.
5. International treaties and conventions.
6. Opinions of scholars and text writers.

NIGERIAN LEGISLATION: (Federal and State). This is by far the most important and superior source of conflict of laws. Enactments by the local legislature can create or repeal rules. The constitution is the grand norm and by **Section 1**, inconsistent laws shall be void to the extent of their inconsistency.

ENGLISH LAW: With colonisation and the cession of Lagos to the British in 1861, **Ordinance No 3 of 1863** *extended and received* some English laws. By **Section 45 of the Interpretation Act²**, English common law rules, the doctrines of equity and Statutes of General Application that were in force as at **first of January 1900** have been received into Nigeria. Only to the extent as the local jurisdiction and circumstances permit-**Section 32 Interpretation Act**. The various State High Court Laws adopt this incorporation. ***Benson V Ashiru*** also adopted English Common Law.

:: For a Statute of General Application to be enforceable in Nigeria:

- It must have been in force as at 1st of Jan 1900.
- It must apply to all parts of England only-***Attorney General V John Holt and co.***
- It must apply to all classes of people in England- ***Labinjo V Abake.***
- It must apply to both civil and criminal courts- ***Young V Abina.***

:: Note that the Western groups of state have repealed this provision and re-enacted the ones they deem relevant.

:: Note also that since Nigeria is a sovereign nation, its local legislature can repeal any of these English laws.

LOCAL AND FOREIGN DECISIONS: New rules and precedents are evolved to interpret the law and deal with novel circumstances and issues. Such precedents form a viable source of Nigeria's conflict of law rules. In practice, our judges have adopted a mechanistic approach in conflict of laws situations.

:: According to the court in ***Young V Bristol***, the Supreme Court can overrule its previous decision where it was given per incuriam.

¹ Dicey and Morris classify the sources of conflict of laws into: statutes, decision of courts and opinion of jurists.

² A similar provision can be found in the Supreme Court Ordinance 1914 narcistic

:: In *John V Lawanson*, the Supreme Court held that neither the decision of the Privy Council nor of the House of Lords binds it but are of merely persuasive authority.

PUBLIC INTERNATIONAL LAW: also form a veritable source. The Nigerian Courts are cautious of the international sphere and current practices when formulating their conflict of laws rules...

INTERNATIONAL TREATIES AND CONVENTIONS: Note however that an international treaty or convention has to be domesticated to have force of law in Nigeria. **Section 12 of the 1999 Constitution.**

OPINION OF WRITERS, SCHOLARS AND JURISTS³: by formulating various theories and espousing various principles, they have contributed immensely to the development of conflict of laws through the ages.

Customary international law can also be a source. They are norms from accepted usages and practices of the whole world-*Lord Denning in Trendtex V CBN*. For example judicial immunity, diplomatic immunity, and so on.

³ Like, Huber, Savigy, and so on.

DIMENSIONS OF THE SUBJECT (CONFLICT OF LAWS) IN NIGERIA.

1. Inter-community.
2. International.
3. Inter-state.
4. Interpersonal.
5. Inter temporal.

Inter-Community: where the laws of more than one community are applicable to the facts of a particular case. E.g. ECOWAS law and that of Europe.

International Dimension: here, the foreignness of the facts or parties relates to an independent sovereign nation. E.g. where the parties are resident in *Nigeria*, the facts occurred in *Ghana* and the case is instituted in Nigeria⁴. Then the laws of Ghana and Nigeria (two sovereign nations) are in question.

Inter-state Dimension: the court in *Babcock V Jackson* noted that in federations like Nigeria (with 36 states) where constituent states are empowered to make laws, the issue of which state's law should apply may arise in a dispute. Although in practice, most of the laws of the various states in Nigeria are similar thereby giving rise to *artificial conflict*⁵.

This dimension may be dispelled by some realities like:

- The 1999 constitution which applies to all citizens of Nigeria irrespective of origin or State.
- The federation is viewed as a single unit where the matter or issue falls within the Federal jurisdiction. For example in matrimonial causes.
- The Sheriff and Civil Process Act makes the judgment of one court of a state equally enforceable in another state of Nigeria under certain conditions.
- The Evidence Act enjoins us to take cognisance of the laws of sister states.

Inter-personal/Internal conflict: Certain systems of law are applied on personal (rather than territorial) basis. E.g. Customary and Islamic Law. Nigeria has over 250 ethnic groups with their diverse customary laws. Inter-personal/Internal conflict occurs where a person is amenable to more than one personal system of law within the same territory. The question then arises as to which personal system of law should apply?

WHAT IS THE RIGHT NAME FOR THIS COURSE?

Is the term; "conflict of laws" appropriate?

⁴ The question then is; should Nigerian or Ghanaian law apply? Ghana is an independent Nation, Nigeria is an independent Nation. Therefore there is a conflict between Nigerian and Ghanaian law. This is an example of the international dimension of conflict of laws.

⁵ Conflict could be artificial where both laws are substantially similar and the application of either would produce the same result. So in essence, there is no real conflict.

:: Various names have been suggested for this course. Names like; “comity”, “law of multi-state problems”, “Inter-municipal law”, “international private law”, “Private international jurisprudence”, “conflict of laws” and so on...

:: Some have suggested that this course be called Public International Law taking into cognisance the international factor of the disputes. Morris disagrees. Public International Law deals with the international relationship between States while Private deals with the international relationship between an individual and states. Also, the rules of public international law are basically uniform while conflict of laws rules differ from country to country. Furthermore, under conflict of laws not all foreign elements are international⁶.

:: Over time, the names; “Private International Law” and “Conflict of Laws” have assumed prominence among the courts, judges, practitioners and scholars.

:: Some argue that the term “conflict of law” is confusing because people tend to read the literal meaning of *conflict of laws* which depicts two laws as fighting for supremacy⁷.

:: For a matter to be *conflict of laws*, it must throw up a problem that is both **spacial and horizontal**. Spacial in the sense that it crosses borders and horizontal in the sense that both laws are potentially applicable and equal in strength/legitimacy.

In conclusion, scholars have not been able to come up with a perfect/undisputable title for this course. However, the term “conflict of laws” has been widely utilized... though occasionally interchanged with the term “private international law”.

WHAT EXACTLY IS THE NATURE/AIM OF THIS COURSE?

:: The crux of this course lies in choosing from a number of potentially applicable laws. As noted above, a Conflict of Laws situation arises where a **civil**⁸ case before the court has a foreign element. The courts would then have to widen their horizon beyond the forum law⁹.

:: There could also be internal conflict of laws. This occurs where a person is amenable to more than one **personal** system of law. E.g. Islamic or customary law can apply to a single person.

:: The foreign element(s) in a case can be recognised by looking at the:

- **Facts:** Where the facts (or some of the facts) occurred in a foreign territory.

⁶ As we have noted earlier that there could be the inter-state and inter-personal dimension of conflict of laws. For example, in a Federation like Nigeria, there could be an interstate dimension to this subject since each state legislature can make laws within their legislative competence for the state.

⁷ For example an inconsistent state law submitting to the federal law. This situation is a constitutional law issue.

⁸ Conflict of laws would not apply where the case deals with a criminal matter, revenue, public, and other like matters... this shall be discussed later.

⁹ Forum Law meaning the law of the place where the court is. Where the action is instituted.