TOPIC:

THE TECHNIQUE AND PROCESS OF APPLYING CHOICE OF LAW RULES IN INTERSTATE AND INTERNATIONAL CONCFLICT OF LAWS

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Abstract:

The question of jurisdiction and the choice of choice of law have a thin line which leads to myriad of errors in our court to deny a jurisdiction over a matter it ordinarily has jurisdiction over. This can be resolved by appreciating the difference between the two. The choice of law to apply also has different process which the court must use in determining the appropriate law to apply to the facts before it. In doing this, this paper will give a critical overview of these processes to wit: Characterization, connecting factors, and the maxim ***locus regit actum*** *in dealing with a matter either with interstate element or international element.*

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CHAPTER ONE

INTRODUCTION

After indicating the applicable law the task of conflict rule would ordinarily have been completed. However, it is the province of conflict science to prescribe the parameter for the operation of the indicated law. In order to address the issue of conflict in a given scenario, three important questions have to be answered: a) Does the court have jurisdiction to determine the case?; b) if so, what law will the court apply to determine the outcome and c) will the court recognize or enforce a foreign judgment purporting to determine the issue between the parties?

Conflict of laws concerns relations across different legal jurisdictions between persons, and sometimes also companies, corporations and other legal entities. But the question has been asked that why should the court concern itself with cases which are to a greater or lesser extent, foreign cases? The justification for conflict of laws can best be seen by considering what would happen if in fact, it did not exist. Theoretically, it would be possible for the courts, while opening their doors to foreigners, to apply the domestic law in all cases. This application however, may result invariably in grave injustice to both parties.

Therefore, where any question of the choice of applicable legal system and the question of choice of applicable jurisdiction arises, the

subject of conflict rears its head and connecting factors are identified to determine the applicable law.

In order to identify the proper connecting factor however, there is a need to know the legal category into which the facts of the case fall. i.e there is a need for a characterization of the problem. Characterization is the preliminary stage in the process of choosing the applicable law for the purpose of reaching an acceptable or just decision. The factual situation has to be determined in order to know the aspect of law the facts fall into after which the appropriate connecting factor for the determination of the issue will be determined . Characterization leads the way in determining the connecting factor. The characterization (also referred to as categorization) of a substantive matter is based on its facts and ultimately shows the cause of action. Cause of action can be tort, contract, or even matrimonial issues. However, it is not in all cases that characterization is so straightforward. There can be more than one cause of action in a particular case when the facts are analyzed which then raises the problem of how the matter should be characterized.

After determining the characterization of the facts, connecting factors or localizing elements are used. The connection may reveal the applicable law or may even dispose of the entire issue. For example, the law of nationality (lex patriae) or domicile (lex domicilii) will define legal status and capacity, the law of the state in which land is situated (lex situs) will be applied to determine all questions of title, the law of the place where a transaction physically

takes place or of the occurrence that gave rise to the litigation (lex loci actus) will often be the controlling law selected when the matter is substantive, but the proper law has become a more common choice. In any given case, the choice of law depends ultimately on considerations of reason, convenience and utility i.e how will the proposed choice of law work in practice?

In summary, in identifying the choice of law question, there is a need to identify:

a) The appropriate jurisdiction of the court;

b) The characterization of the facts and locate the law/set of rules which relates and applies to the characterization identified (a classification of the cause of action by the presiding judge)

c) The connecting factors to the system of law applicable to the cause of action .

d) The applicable law to the facts of the case and which leads to an ultimate determination of that case.

CHAPTER TWO

THE QUESTION OF JURISDICTION AND CHOICE OF LAW

Question of Jurisdiction

The word jurisdiction has been defined as the power of the court to decide a matter in controversy and presupposes the existence of a

duly constituted court with control over the subject matter and the parties.[2]

At common law, the jurisdiction of the court to entertain a suit can be divided into action in rem and action in personam. Conflict of laws is mostly concerned with action in personam. These are actions brought to compel a defendant to do or to refrain from doing something or to pay damages. Jurisdiction over such actions depends primarily, though not exclusively, on the ability of the claimant to serve the court process on the defendant. This is usually due to the presence of the defendant within the jurisdiction of the court. Viscount Haldane succinctly states the position at common law in the following words:

"The root principle of the English law about jurisdiction is that judges stand in the place of the sovereign in whose name they administer justice and that therefore whoever is served with the King's writ and can be compelled consequently to submit to the degree is a person over whom the courts have jurisdiction."[3]

This common law rule is also applicable in Nigeria by virtue of the various High Court Laws of the states.[4] Section 10 of the High Court of Lagos State law provides that:

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[2] H.A.O Abiru: 'The Concept of Territorial Jurisdiction' in **Law and Development in Nigeria: Essays in Honour of Chief Femi Okunnu, SAN, CON,** Lagos, Ecowatch Publication Limited, 2004**,** p.1

[3] See Agbede (1989) at pp 241

[4] The states that constitute the former eastern states have repudiated this common law principle

"The High Court shall, in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment, possess and exercise, within the limits mentioned in, and subject to the provisions of, the Constitution of the Federation and this enactment, all the jurisdiction, powers and authorities which are vested in or capable of being exercised by the High Court of Justice in England."[5]

The principle that the court will assume jurisdiction if the defendant is capable of being served the court processes is based on the court asserting its powers over a person under its jurisdiction. A person outside the jurisdiction of the court can also be subject to the jurisdiction of the court if he submits voluntarily to the court. Such submission may be express or implied. Where a party who has not been served enters an unconditional appearance, he would be deemed to have submitted to the jurisdiction of the court especially where he contests the merits of the case. Submission may also be prior to the commencement of the suit such as through relevant clause in an agreement.

Additionally at common law, the court may assume jurisdiction over a defendant if the claimant obtains a leave of court under the relevant rules of court. There are similar provisions under the various high court rules in Nigeria[6]

[5] The principle was approved by the West African Court of Appeal in the case of *Bruce –vs- Barrett 1 WACA 116*

[6] Order 8, High Court of Lagos State (Civil Procedure) Rules 2012.

From the above it is clear that the common law principle on *in personam* jurisdiction is capable of encouraging forum shopping[7]. To ameliorate this under the English law where the appropriate forum is England and the plaintiff goes shopping abroad, the defendant can apply for an injunction to restrain the foreign proceedings, and if the plaintiff declines to comply with it, he or she will be held in contempt of court. For example, a plaintiff suffers injuries in an air crash in the UK. The airline is incorporated in England, the aeroplane was manufactured in England by an English company, but the company is part of a group with the parent company incorporated in California. Clearly, the plaintiff has powerful incentives to sue in California[8].

As a general rule, the applicable test is that an injunction would be granted if the proceedings in the foreign court are vexatious and oppressive to the defendant and the injunction would not unjustly deprive the plaintiff of advantages available to him or her in the foreign forum. This is the case, unless the plaintiff's only remedy is available in the foreign jurisdiction, in which case an injunction will not be granted.

Where the plaintiff applies for an injunction on the basis that the parties had agreed to refer disputes to the jurisdiction of the English court, then the court will almost certainly grant an injunction. There

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[7] Lord Pearson defined forum shopping in Boys v Chaplin (1971) AC 536 as:*"[A] plaintiff bypassing his natural forum and bringing his action in some alien forum which would give him relief or benefits which would not be available to him in the natural forum.*

[8] *Castanho –vs- Brown and Root (UK) Ltd [1981] 1 All ER 143*

appears to be no similar provision in Nigerian law unless the parties have incorporated a provision with a similar effect as part of their contractual obligations.

There are at least three principles that are used as criterion for determining jurisdiction of municipal courts under European law[9]. Unlike the English law which requires presence of the defendant, such presence is only a procedural requirement under European laws. The first principle is that a court is entitled to hear the action if there is an appropriate connection between the defendant and the forum (in conflict-of-laws terminology, 'forum' means the court hearing the case). The second is that it is entitled to hear the action if there is an appropriate connection between the cause of action (claim) and the forum. The third is that it is entitled to hear the action if the defendant consents to jurisdiction.[10]

Where the action is *in rem*, there is one, and only one, ground of jurisdiction: the presence of the *res* (for example, the ship) within the territory of the court. In Admiralty (maritime) proceedings, the claim form may be served directly on the ship – for example, by nailing (or otherwise fastening) it to the mast or some other prominent feature of the ship. The ship may also be arrested, a necessary preliminary to having it sold.

3.2 Choice of Law Question

[9] T.C. Hartley, International Commercial Litigation Text, Cases and Materials on Private International Law(Cambridge University Press: London, 2009) at page 15

[10] ibid

If a municipal court assumes jurisdiction over a matter with a foreign element, it still has to determine the applicable law. In conflict of laws, it is not automatic that once the appropriate forum is determined, the law of that forum will be applied to the parties.

The reason for applying foreign law is to ensure justice. It will only be fair and just to apply the law which parties envisaged prior to the dispute; a foreign court ought not to upset the expectations of the parties by refusing to apply the law envisaged. For instance, it would be absurd if to declare as a nullity a marriage by two Nigerians, domiciled in Nigeria and celebrated in Nigeria just because the parties have filed for dissolution in Ghana having moved there because the marriage did not comply with the necessary formalities of a Ghanaian marriage.

Another consideration for applying foreign law is policy consideration. It would be against public policy for the court to apply a foreign law if the law requires doing something that will amount to a criminal offence in the forum court.

3.2.1 How is the Choice Made?

Traditionally when faced with a choice-of-law problem, you start with a category – for example, laws dealing with immovable property or issues concerning immovable property – and then decide whether the particular law or issue at hand fits into that category. If it does, you then derive a *connecting factor* that goes with the category

– in the case of immovable property, it is the place where the land is situated – and that tells you what law is applicable.[11]

Typical rules of the conflict of laws state that succession to immovable is governed by the law of the place where the immovable is situated, *lex situs*; formal validity of a marriage is governed by law of the place of celebration; capacity to marry is governed by the law of each party's ante-nuptial domicile. In these examples, the legal categories are succession, to immovable, formal validity of marriage and capacity to marry while the connecting factors are the lex situs, place of celebration and domicile.[12]

In practice this may not be so straight forward. It is not every legal issue that can be easily separated into one legal category. How do you determining the connecting factor to apply? What is the connecting factor for an intangible property, like a letter of credit? Even if these questions are answered, the courts may also be confronted by the problem of ascertaining what the applicable law in the foreign country is. These are technical problems that attract the focus of this branch of the law. The details of these problems are beyond the focus of this paper.

3 ERRORS INVOLVED IN ANSWERING THE QUESTION OF JURISDICTION AND CHOICE OF LAW

Conflict of laws is a very technical subject in law and it is not unusual in practice to find that practitioners and judges take make

[11] T. Hartley (2009) at page 505
[12] J. Morris (2005) at page 9

decisions that are *per incuriam.* An American judge Cardozo once remarked that an average judge when, when confronted by a problem in the conflict of laws, feels almost completely lost, and, like a drowning man, will grasp at a straw.[13]So of the errors are highlighted as follows:

1. A common error faced in practice is the merger of the question of the choice of law with the jurisdiction question. This error is responsible for the inconsistency in the decisions of the Supreme Court in ***Benson –vs- Ashiru***[14] and ***Amanambu –vs- Okafor***.[15] In Okafor, the Supreme Court held that the former Eastern Nigeria Court could not entertain a fatal accident that occurred in former Northern Nigeria. This decision clearly focused on the question of the question of jurisdiction and applied the 'writ rule' to decline jurisdiction. The appropriate methodology should have been to assume jurisdiction and then decide the applicable law. This was done in the court of appeal case of ***Ubanwa –vs- Afocha & anor***. Here the deceased died in a motor accident, which occurred in Zaria in the then North Central State. His widow, parents and children commenced action in Enugu High Court, being the place of domicile of the defendant, for special and general damages under the Fatal Accident Law of former Northern Nigeria. The first and second defendants were respectively the driver of the vehicle involved in the accident and the University of Nigeria Nsukka in

[13] Cited in J. Morris, The Conflict of Laws, 6th edn., (London, Sweet & Maxwell, 2005) at page 8
[14] 64[1967] NMLR 363
[15] 63[1966] 1 ALL NLR 205

Eastern Nigeria which owned the vehicle and employed the driver. Counsel for the defendant in a preliminary objection argued that the High Court of former East Central State of Nigeria had no jurisdiction to try an action based on an accident that occurred in the former North Central State and that the Fatal Accident Law under which the action was brought did not have extra-territorial application. In overruling the objection, **Ikwechegh, J** held that by virtue of Section 22 Sub-section 2 of the High Court Law of former East Central State, 67 the High Court of the state had jurisdiction to entertain an action brought against a defendant residing within the state, and by virtue of Section 73(1)(a) of the Evidence Law, the court had the power to apply the law of Northern Nigeria[16].

2. Another error to look out for is the tendency of Courts denying jurisdiction of a matter based on where the facts occurred. The error is borne of out of the fact that the court would ordinarily have no business with facts of a case which happened outside its jurisdiction. However, the choice of jurisdiction does not border itself with where the facts occurred but where the defendant can be found and served with the writ. The emphasis here is the where the defendant can be found and served and not necessarily where the fact occurred. But Judges do not appreciate this difference hence they tend to deny of jurisdiction on this ground. In answering this question, what

[16] In Benson, the supreme failed to overrule the decision in Okafor even though the facts were similar

the Court is supposed to do is simply to assume jurisdiction based on the writ rule and then localize the facts in order to know the law to apply.

3. Another error to avoid relates to pleadings in civil proceedings. Pleadings are averments by the party which he claims to be the facts of the case. As far as the party is concerned, the facts pleaded have the content and the strength to give him judgment in the case[17]. In the case of the plaintiff, the pleadings without more, can only give him judgment where the defendant admits the claim or relief. Pleadings are not evidence; they are merely allegations which must be supported by evidence. Therefore, if a party fails to lead evidence in support of his pleading, the averment in the pleading goes to no issue. Similarly if evidence is lead on unpleaded facts, the evidence goes to no issue and cannot be relied on by the party leading the evidence.

Generally in civil proceedings, a party is expected to plead only facts, there is no need to plead the law. However, foreign law is not treated as 'law' is respect of pleadings. It is treated as a fact which must be proved. This means a party who intends to rely on foreign law must plead the law as a fact and lead evidence to establish the fact.

The success of a choice of law decision may rest on how proper the pleadings of the parties are. If the foreign law is not

[17] *Boniface Anyika & Co. (Nig.) Ltd. –vs-. uzor (2006) 15 NWLR (Pt.1003) 360*

properly pleaded or no evidence is lead to establish it, the court will most likely make the wrong decision in the choice of applicable law. Thus practitioners must be careful in drafting their pleadings especially where it involves a choice of law decision.

CHAPTER THREE

THE PROCESS OF APPLYING THE CHOICE OF LAW RULES

Characterization

Like we said earlier, the first stage is for the court to determine whether it has jurisdiction and then determine which choice of law be applicable to facts of the case.

Once the forum court has decided that it does have jurisdiction to hear the case, it then must characterize or classify the cause(s) of action. This is regarded as the most important and difficult problem in conflict of laws as trade and travel between states have become the norm and the effects of broken promises, defective goods, traffic accidents, and marital squabbles are no longer confined to the sovereign territory of one particular state or nation. But local laws are usually enacted to satisfy domestic interests by legislators who focus on keeping the support of their constituents rather than on harmonizing their own laws to conform to international principles. This reflects a prevailing tension between legal unilateralism and multilateralism. Hence, every law has both a territorial and a personal application so it is applied by courts within the boundaries of the state yet,

as an aspect of the social contract, it also claims to bind those individuals who owe the government allegiance, no matter where they may be.

With regards to the question of which law will be used to characterize; in **Macmillan Inc.** v **Bishopsgate Investment Trust Plc**[18], the most recent English case, Auld LJ. Accepted that, ". . .the proper approach is to look beyond the formulation of the claim and to identify according to the lex fori the true issue or issues thrown up by the claim and the defence".

In characterization, the court is required to analyze the pleadings prepared by the parties and to assign each component element to the most appropriate juridical concept or category. The rules of any given system of law are arranged under different categories, addressing procedure, status, contract, tort, divorce, nullity, etc. For each category, there is one or more choice of law rule(s). Hence, for example, all questions as to the status of a person before a court, viz. an infant or adult, legitimate, legitimated or illegitimate, married or not, mentally incapacitated or not, bankrupt or not, etc. will all be governed by the person's personal law, namely the law of nationality (the lex patriae) or habitual residence in a civil law state, or the law of domicile (the lex domicilii) in a common law state.

Characterizing laws as either procedural or substantive is necessary, but this part of the process can be abused by the forum court to maximise the use of the local law.

[18] [1996] 1 ALL E R 585

The generality of the characterization process is not, and cannot be, a wholly scientific process. It is always a matter of interpretation. For example, if A who is a national of Ghana, dies having made a valid local will leaving land situated in Nigeria to C who is domiciled in Liberia, how is the issue to be classified? One might say that any rights that C might have are vested by the will that was made in Ghana (i.e. the lex loci actus). Equally, the right to succeed to title might be an aspect of C's status as the oldest surviving male heir under Liberian law (the lex loci domicilii). Or it may be a matter for the law of Nigeria since all matters of title to land must be adjusted by the lex situs as the law of the place where the land is situated. Thus, completely different judgments might result depending on how the forum court characterises the action. One of the most enduring solutions to this problem was proposed by Savigny (1779–1861). He argued that it was always necessary for the court to find the "natural seat" or "centre of gravity" for the case by identifying the largest cluster of "connecting factors" to a particular legal system. If all courts adopted such an international outlook, he reasoned, this would eliminate forum shopping by producing the same choice of law no matter where the case was begun. Unfortunately, the theory has not delivered the desired results. Forum shopping remains a problem, and neither legislators nor judges have been able to agree on characterization issues, producing classifications that extend rather than reduce international divergences. In an attempt to avoid obviously unjust results in particular cases, some judges therefore created a number of public policy exceptions to justify decisions "on the merits". Ernest G Lorenzen commented that this

strategy was a warning that there must be serious problems with the rules if policy exceptions were the solution.

There are several cases when characterisation is not made by the lex fori[19]:

-Choice of law clause (lex voluntatis)
-Subsequent characterisation (which is a problem of the lex causae)
-Real estate or immovables (when lex situs applies)
-Renvoi
-Unknown legal institutions
-Law of nationality (when lex patriae applies)
-International treaties

Connecting Factors:

There are many jurist of conflict of laws who have tried to expound the meaning of the connecting factors without reaching conclusion of the one and universal meaning; however for the purpose of this assignment, there is one meaning and general that is going to be employed for answering this question.

Meaning of connecting factors

Connecting factors are the circumstances that make linkage between event, thing, transaction, person and country; such factors link person, events, etc. to country. These elements linking dispute to particular

[19] http://en.wikipedia.org/wiki/Characterisation_%28law%29

countries are connecting factors links between event, thing, transaction, person and country; such factors link person, events, to country.

Examples of Connecting Factors are:

1. Personal (domicile, habitual residence, and very rarely nationality);
2. Place where transaction occurs (place where a marriage was celebrated loci celebrationis or where contract was concluded loci contractus); place of performance of contract; place where property situated (situs); place where court is sitting (forum); intention of parties.

It is pertinent to note that connecting factors enable courts to identify applicable law (i.e. choice of law rule may say title to immovable property governed by law of country where land situated.

Rationale behind connecting factors

Connecting factors enable courts to identify applicable law that means choice of law rule may say title to immovable property governed by law of country where land situated. They determine under which system of law and within the jurisdiction of which country's courts certain issues are to be determined. These elements linking dispute to particular countries are connecting factors. Also connecting factors connect legal categories to applicable laws. Moreover, connecting factors explicate some outstanding fact which establishes natural connection between factual situation before court and particular system of law.[20]

[20] *See Kitime Eliud's paper on Personal Connecting Factors and the Conflict of Laws: The Margosa To the Choice of Laws in Resolution of Disputes Containing Foreign Elements

The identification of the appropriate law may be viewed as involving a three stage process:

1. Characterization or classification of the relevant issue; (for e.g. Tort, contract or matrimonial issue)
2. selection of the rule of conflict of laws which lays down a connecting factor for that issue; and (as provided in the forum state)
3. identification of the system of law which is tied by that connecting factor to that issue

In practice, in particular at pre-contract stage, the approach should be a bit more sophisticated, as such:

1. Identification of the forum (which is either stipulated or not)
2. Identification of the applicable set of conflict of laws rules (determined by the seat of the forum)
3. Characterization or classification of the relevant issue (contract issue, pre-contract issue, tort issue, power of attorney issue, formal requirement issue, etc.)
4. Selection of the rule of conflict of laws which lays down a connecting factor for that issue
5. Identification of the system of law which is tied by that connecting factor to that issue.

At a first stage the jurisdiction of a court must be determined. The conflict of laws rules of the court shall be applied to decide which system of law is to be applied.

At a second stage the judge or the presumed judge is likely to commence by asking himself what is the nature of the problem which confronts him. In other words he must classify the "cause of action" in order to determine the applicable conflict of laws rule. This way has been explained by Cheshire and North as follows:

This "classification of the cause of action" means the allocation of the question raised by the factual situation before the court to its correct legal category. Its object is to reveal the relevant rule for the choice of law. The rules of any given system of law are arranged under different categories, some being concerned with status, others with succession, procedure, contract, tort and so on, and until a judge, faced with a case involving a foreign element, has determined the particular category into which the question before him falls, he can make no progress, for he will not know what choice of law rule to apply. He must discover the true basis of the claim being made. He must decide, for instance, whether the question relates to the administration of assets or to succession, for in the case of movables left by a deceased person, the former is governed by the law of the forum, the latter by the law of the domicile. Whether undertaken consciously or unconsciously, this process of classification must always be performed. It is usually done automatically and without difficulty .

Once the proper conflict of laws rule has been identified that connects the question identified by classification of the cause of action to a particular system of law, this being referred to as the "connecting factor", the applicable system of law which is tied by the connecting factor must be applied.

Furthermore, the judge shall identify which set of rules from or part of that system should be applied to determine the dispute.
Conflict of laws issues can arise in respect of any problem that appears before the court.

As earlier noted in the conflict of law, connecting factors are facts which tend to connect a transaction or occurrence with a particular law or jurisdiction. The following are the examples of connecting factors;

1. Domicile, residence, nationality or place of incorporation of the parties;
2. The place of conclusion or performance of the contract;
3. The place where the tort or delict was committed;
4. The flag or country of registry of the ship;
5. The ship owner's base of operations.

Connecting factors are taken into consideration and weighed by courts and arbitrators, in determining the proper law to apply in deciding the case or dispute. In Zielinski v. Empresa Hondurena de Vapores , it was held that, as to contract, the place of contract is not a substantial connecting factor in the choice between competing laws to govern a maritime tort.

Applicable laws on the basis of Locus Regit Actum

Locus regit actum simply put is the municipal laws of the place where the facts occurred. This principle has been universally recognized since the Middle Ages. It can be justified not only on grounds of tradition and authority, but also by reason of obvious justice and convenience. In making their contract, the parties must be able to rely on such legal advice as is available in the place where they are and such advice (and assistance) is not necessarily obtainable with regard to any formalities except those of the local law[21]. Observance of the local form is thus sufficient to make the contract valid. Is it also necessary? Does the principle *Locus Regit Actum* apply as a permission to use the local form or as an imperative? Does the form depend on *lex loci contractus* not only affirmatively, but also negatively? Does it mean that the parties may or does it mean they must observe the local form?

There is not clear authority on this point.[22] With regard to marriage, English law clearly applies the rule Locus regit actum imperatively: no marriage is (in general) valid unless it has been celebrated in accordance with the local form[23] on the other hand it is equally clear from the decision in ***Van Grutten v Digby***[24] that marriage settlement is valid if its form is in accordance with the provisions of its proper law, although, as was held

[21] This argument was already developed by Savigny See S.381. The reasons why it applies to form but not to substance has been convincingly stated by Batiffol, S. 425 p. 364 . See also Totterman " Functional Bases of the Rule Locus Regit Actum in English Conflict Rules" 2.I.C.L.Q 27 (1953)

[22] The Scottish case, Valery v Scott (1876) 3 R. 965, and the Indian case *in the Goods of McAdam (*1895) I.L.R 23 Calc. 187 are authorities in favour of the permissive principle

[23] Scrimshire v Scrimshire (1752) 2 Han. Con. 395; Berthiaume v. Dastous (1930) A.C 79 (P.C) See Rule 30 and ante, p. 232

[24] (1862) 31 Beav. 561 esp. per Romilly M.R at p. 567

in ***Guepratte v Young***[25] ; compliance with the local form is sufficient. It is submitted that if the question ever came for decision in an English Court in connection with a mercantile contract, the court would be more likely to follow the analogy of the authorities on marriage settlements than that supplied by the case on marriage[26]

It is instructive to note that it has never been decided that a contract formally valid under its proper law must be held void by reason of non-observance of the local form. But where it relates to transfer of property the observance of the local form is necessary. The formal validity of a contract with regard to land depends on the proper law of the contract, which is in general , though not necessarily , the law of the country where the land is situate (lex situs). Hence where a contract on immovable property is concerned it will be valid even if it does not comply with the forms required by the proper law, but provided it complies with the local form. Note however that this does not apply to conveyance of land because the contract must comply with the formalities of the proper law of the *lex situs*. But with regard to contract on a movable property , it will be valid if it complies either with the local form or with the form prescribed by the proper law.

The maxim *locus regit actum* also applies to marriage. A marriage celebrated in the mode, or according to the rites or ceremonies, held requisite by the law of the country where marriage takes place, is valid. Our Courts give effect to the principle that the form of a contract is

[25] (1851) 4 De G. & Sm. 217 ; See Rule 127 Sub- Rule 1

[26] S. 34 of the Companies Act 1948, appears to assume that a company incorporated in the United Kingdom may conclude a contract in the form prescribed by the law of the United Kingdom.

governed by the law of the place where the contract is made, and hold that , though under certain circumstances other forms may be sufficient, yet local form always suffices, and that in general " the law of the country where the marriage is solemnized must alone decide all questions relating to the validity of ceremony by which the marriage is alleged to have been constituted.[27]

CHAPTER FOUR

CONCLUSION

This paper has sufficiently demonstrated what constitutes the question of jurisdiction and the question on the choice of law in conflict of laws. We have seen from the above that the thin line between the two often leads to some sort of confusion in court where Judges refuse to entertain a matter simply because the fact occurred in outside its jurisdiction. This paper has sufficiently identified this errors and the possible or solution on the errors. The process of applying the choice of law rules by characterization, connecting factors and principle of *locus regit actum* have also been dealt with and we concluded that after the court assumes jurisdiction over a matter, the next thing is that it look at is the categorization or the characterization of the fact to determine which aspects of law will be applicable to the facts. Having done this, the court then looks at the connecting factors provided by the aspect of law to narrow down the appropriate law to apply to the matter before it. The principle of *locus regit actum* also plays a significant role in assisting the court in choice of law to

[27] Sottomayor V De barros (1877) 3 P.D 1, 5 (C.A)

apply which is simply by looking at the local form or the municipal law of the place where the fact occurred.