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The Outer And Inner Corners Of The Base Of The Conflict

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Abstract

Walk in this argument leads to acceptance that the pillars of the rule of conflict are not like other pillars of the other legal rules. But this conclusion does not seem to make sense. In fact, the rule of conflict shares with the other rules of law elements in which no legal rule can be established. However, they are separated from them in subjectivity that demonstrates their specificity and helps them to fulfill the function entrusted to them by the codified, as noted above. This research will be divided into two sections as follows: The first topic: the external pillars of the base of conflict. The second topic: the internal pillars of the base of conflict. The first topic External Staff We will divide this topic into two requirements as follows: The first requirement: the external elements of the legal rule in general. The second requirement: the external elements at the base of the conflict.

Las Esquinas Exteriores E Interiores De La Base Del Conflicto.

Resumen

Caminar en este argumento lleva a la aceptación de que los pilares de la regla del conflicto no son como otros pilares de las otras reglas legales. Pero esta conclusión no parece tener sentido. De hecho, la regla del conflicto comparte con las otras reglas de la ley elementos en los que no se puede establecer ninguna norma legal. Sin embargo, están separados de ellos en subjetividad que demuestra su especificidad y los ayuda a cumplir la función que les ha sido encomendada por los codificados, como se señaló anteriormente. Esta investigación se dividirá en dos secciones de la siguiente manera: El primer tema: los pilares externos de la base del conflicto. El segundo tema: los pilares internos de la base del conflicto. El primer tema Personal externo Dividiremos este tema en dos requisitos de la siguiente manera: El primer requisito: los elementos externos de la norma legal en general. El segundo requisito: los elementos externos en la base del conflicto.

The first requirement

External pillars in the legal base in general

Pillar of imposition and judgment

It is well established in the legal art that the legal rule *larègle de Droit* is an abstract general rule, that is, when it is established, it addresses individuals and things in their qualities and not themselves, and does not mean an individual person or something. When applied, it shall apply to all, unless an exception is generally devoted to individuals, objects or facts.

The prescription of generality and abstraction in the legal rule means that it is a hypothesis *règle hypothétique*, in the sense that the element of the order, which contains it, is linked to a status in the person or thing or event, and the rule of that order only applies in the hypothesis in which the person, thing or event that attribute.

This means that the rule of law is generally based on two pillars: first, the corner hypothesis *hypothèse présumé*. It is a description of a particular situation or a combination of situations such as concluding a marriage, committing a wrongful act, concluding a contract ... and the imposition contains the conditions of application of the legal rule. The second pillar

is the legal disposition or effect (*le dispositif - effet juridique*), which is the solution or provision established by law in relation to the *de facto* or the sum of the *de facto* situations and the provision applies when the conditions and conditions specified in the imposition are met.

The nature of the relationship between the two elements

If the enforcement of the rule means the order of the judgment or the legal effect on the legal imposition that it governs, it follows that the legal rule establishes a relation conditionnelle between the pillar of the imposition and the pillar of the judgment, so that, if the conditions of the imposition are met, the judgment must be enforced.

For example, article 173 of the Egyptian Civil Code stipulates that “every mistake that causes harm to others shall be indemnified by the person who commits compensation”. Accordingly, if a person wrongfully causes harm to others (corner of imposition), he must be obliged to compensate (corner of judgment).

The difference between rule and decision and the general elements mentioned for the legal rule makes it differentiate from other legal instruments *les normes juridiques* which are regulated by the codified life in society. One of these tools is “decisions”.

We have already stated that the rule of law is an abstract general rule, which, according to its content, is capable of governing a particular issue, which is inherently a hypothetique in which the cornerstone of the provision or legal effect applies if the conditions required in the imposition are met. La ddecision, on the contrary, is subjective, non-abstract and even non-permanent. By its very nature it is hyperbolic. The legal effect, or provision, contained in the resolution does not depend on the fulfillment of certain conditions in a future imposition or order, but on the immediate effect.

Take, for example, the decision to dissolve parliament or the parliament, where the legal effect or judgment of dissolving the parliament does not depend on the occurrence of a particular matter. Similarly, the decision to nationalize a particular economic project does not comment on the transfer of ownership of that project to the State on the occurrence of a particular order, or on the availability of special conditions before the transfer of ownership (judgment or legal effect), but decisively decides to transfer ownership to the State. The same applies to the decision of confiscation, expropriation, and devaluation.

It is useful to say here that if the general elements of the legal rule are important to distinguish them under domestic law from decisions, and that importance is also reflected under the law of international special relations,

or private international law, [1] this raises the question of whether the rules of that latter law, Especially the rule of conflict, also exists only with those elements or general elements?

The second requirement

External corners at the base of the conflict

The nature of these pillars: the rule of conflict is a legal rule like any other rule of law. In addition, the general elements mentioned above must be available: the corner of enforcement, the corner of governance or legal effect, but the legal nature, and the function entrusted to that rule, imprint the pillars referred to a specific character and concept.

On the one hand corner of the imposition L'hypothese: At the base of conflict, it is a matter or a particular situation or a set of issues or real situations. This de facto situation or issue constitutes the scope or framework of *L'etendue* to make the rule of conflict. For example, the civil status and eligibility of the person, the local conditions of marriage, divorce and divorce, descent, form of actions

It is noteworthy that this is a situation or factual situation *Situations de fait*, and it is inaccurate legally described as situations or legal issues *Situations juridiques*. All situations and links that exist between individuals remain mere realities or bonds, and remain so until addressed by law. The interests of individuals and their legal status arise from realistic situations and linkages. But because the law recognizes and protects it, we call it legal interests or centers. It does not take this description before the law means it and undertakes to protect it.

In the field of relations and ties of a foreign or international character, the legal description is attached only to the applicable law, which is chosen and determined by the rule of conflict. Given the characteristics of that rule, as will be explained later, it does not by itself give legal description to the relationships and ties that define its scope of action. (4) Perhaps this is why the problem of adaptation, which revolves around determining the legal nature of a relationship or association, is born to know the rule of conflict. Applicable to them. The problem thus appears to be related to the scope of the rule of conflict, which must be resolved before the latter can be implemented.

On the one hand, *Le dispositif*, at the base of the conflict, is the guidance to, or selection of, the law governing the relationship or association in question, and the order to enforce that law. In the legal texts containing the rules of conflict, we read in the legal texts containing the rules of conflict the following: For civil status and eligibility "The civil status and eligibility

of persons (the corner of enforcement) shall be governed by the law of the State to which they belong by their nationality (corner of government)” () and for the effects of marriage. We read “The law of the State of the husband’s country at the time of the marriage shall apply to the effects of the marriage contract, including the effect on the property (the obligatory corner)” (or) as otherwise determined by the text “Effects of marriage (the obligatory corner) governed by The law of the State in which the spouses are settled (corner of government) “() or are subject to rights The spouses are obliged in all their property related to their personal relations (the element of imposition) of the law of the domicile of marriage (corner of governance).

The specificity and outcome of the governance pillar: However, it should be noted that the cornerstone of the conflict rule, in fact, involves two important things:

First, the obligation addressed to the addressee to the rule of conflict to apply the law to which it is guided and chosen by that rule. This is a genuine Obligation obligation, in the form of the essential element of the logical content and the basis of the rule of conflict. This obligation stems from the binding character of the conflict rule itself, which we will make in its proper subject.

It is not feared, however, that the addressee to the conflict rule is directly and genuinely the authorities of the State from which it is issued, primarily the courts of that State, which are exclusively committed to the application of that rule when the prerequisite is there: a relationship of a foreign element or an international character.

This can be said that the parties to the relationship of foreign element are the indirect address to the rule of conflict, usually when the rule of conflict allows them to determine the law applicable, or when they adhere to the application of a particular law before the judicial and other bodies.

Secondly, an officer or criterion that determines, in an abstract manner, the applicable law, that is, what we call the selection or attribution officer: without this officer or secondment, the rule of conflict cannot perform its function of choosing the applicable law.

We will see that this officer is based on a nominal identification of a particular legal and factual element: nationality, domicile, domicile of money and sometimes on a statement of the moment in which it is credible, such as the nationality of the husband at the time of marriage, or domicile at birth or the location of money at the time of acquisition of ownership. ... This statement of judgment in the rule of conflict clearly shows that that

rule did not exist to resolve the overlapping areas of application of the laws of States in relation to a relationship of foreign element. Such interference does not exist at all, but there are only a number of solutions in relation to the relationship with the foreign element, and there is a “hesitation” between them, and comes the rule of conflict, through a corner in which to tighten this frequency, by choosing one.

It is also not a rule of legislative jurisdiction, since it does not give a particular state legislative jurisdiction, as it is granted by public international law, but is the rule of “choice” *Regle d’option* to join laws to rule disputes international special relations, and this choice and the obligation to apply The law chosen is at the heart of the rule of law or the legal effect of the rule of conflict. It appears that this element is the inherent characteristic of the rule of conflict and at the same time shows its own elements, as we see in the following section.

The second topic

The inner corners

Subdivision: If the rule of conflict shares the other rules of law in the outer elements, it is necessary but it has the necessary elements to distinguish it from others, and help it to perform its function which differs from the functions of other rules of law, and the inner pillars of the base of the conflict.

This section will be divided into two requirements as follows:

The first requirement: the determination of the internal pillars.

Second requirement: Determination of the legal system for the corner of the selection officer.

The first requirement

Determine the inner corners

First: The three pillars of the conflict rule:

The rule of conflict is a legal rule of a technical nature, and a special function is the selection of the appropriate law to govern international special relations. If we analyze one of the rules of conflict set out in Egyptian private international law, [3] it is found to be based on three important pillars. For example, article 13/1 of the Civil Code stipulates that “the law of the State of the husband’s country at the time of the marriage shall apply to the effects of the marriage contract, including the effect on money”.

The internal pillars of the conflict rule contained in the preceding text are:

Pillar I: the subject of attribution, or the idea entrusted to Nation *Rattachée*, which is the situation, issue or factual situation (), which constitutes the content of the above-mentioned “imposition” corner, and the various

legal solutions on which it relates to the legal system. To more than one country. It is in the example that we have mentioned the personal and financial effects of marriage.

The attribution relates to the *L'endue* domain of the conflict rule, as noted, which raises the problem of defining this objective range, known as the problem of adaptation, to which a separate topic is devoted.

The second pillar: the selection officer *Critere de Choix*, or so-called *Facteur* factor, or *Circonstances* circumstance or point of reference, which, which renews, in an abstract way, the law applicable. This officer is the constituent or criterion by which the regulator shows his preference for a particular law, or he is deprived of the rest of the laws that offer their objective solutions to regulate the relationship of the foreign element. In our example, it is the husband's nationality. This element of the rule of conflict requires some detail, which is presented in the second demand of this topic.

The third and final pillar: the law applicable *Droit applicable* or the so-called law to regulate the relationship in dispute. In this example, it is the law of the State of nationality of the husband at the time of marriage.

With regard to this last pillar, we make several important observations:

Second: Notes in the applicable law corner:

The first observation is that this is the law of "applicable", i.e. the provisions to be applied and enforced, as long as it is chosen as the most appropriate law to rule the dispute. This is the content of the obligation addressed to the addressee to the rule of conflict, that is, the courts, which is part of the corner of the ruling *Le dispositive* in the rule mentioned. There is no doubt that the departure from that obligation empties the base of conflict of content, and lost the goal sought by the codified behind.

In this regard, the term "law assigned" is insufficient to translate the obligation to apply the law established by the conflict rule. *Le rattachement* does not benefit the "need" to apply and enforce the provision of this law. Although we will sometimes use this term, it must carry on the meaning we mean.

The obligation to apply the law chosen to govern the dispute does not confuse itself as binding in the same rule of conflict, that is, whether or not it should be applied in relation to relations with a foreign element. The first erupts after the realization of the rule of conflict, and the second erupts before that realization, on what we will show regarding the characteristics of the rule of conflict.

The second observation is that the attribution implemented by the rule of conflict is a full or total attribution of the rules of law that are defined or

chosen to govern the relationship of a foreign element, that is, the attribution of the sum of the legal system of a particular State: the rules of private law, the rules of common law, the rules of Application is necessary.

The notion of “total attribution” to the law applicable as a whole is indivisible, especially in a foreign-imposed hypothesis, in no way contradicting the nature of the conflict rule itself, nor the nature of the law of its choice.

(A) In terms of the conflict rule itself, we say that it is not a means or a tool to guide or “choose” a particular law, nor is it a criterion to distinguish between the rules of that law by their nature: rules of general law or rules of private law. The rule of conflict has a capacity, or general vocation, to resolve the problem of choice between multiple laws regarding cross-border relations of individuals.

Professor NIBOYET says that “private international law is not only designed to resolve conflicts of private law, but in general, in private and public law ... Whether we want it or not, we are in private international law, We are obliged to leave a place for the rules of foreign common law, to apply them, and to resolve conflicts between them.” Or, as Professor P. Mayer decides, “the rule of conflict does not specifically define the rules of private law or police law, some of which do not define more compulsively than others, but rather defines the entire legal system and leaves, without interference, the choice between rules by sect. Situations you mean or exclude (). This is what has become traditional jurisprudence (). It is supported by modern techniques in private international law, of which the Swiss Private International Law Group of 1978 is mentioned (art. 13).

(B) In terms of the law chosen, the notion of “total attribution” is also consistent with the nature of the choice chosen to govern the relationship in question. This law, like all laws falling within the scope of international conflict of laws, has the power to govern all cross-border links between individuals, as well as national ties free from foreign elements.

That capability is simply a “offer” by that law. It is an optional offer that is not binding on the judge competent to hear the case, in the sense that the judge may accept the presentation of a particular law by virtue of the dispute, or put it, and accept an offer from another law more competent and appropriate, all according to objective criteria. The introduction of foreign law to its solutions and provisions could become final if combined with “acceptation” by the rule of conflict in the judge’s law.

In this regard, however, the optional character of the presentation of foreign law should not be confused with the obligation to apply that law, which is determined by the cornerstone of the rule of conflict. “Presentation” by for-

foreign law is “optional” before acts and the application of the rule of conflict, but it is now a duty to respect them.

This analysis, that is, the “offer” by foreign laws and the “acceptance” of the judge’s legal system and the rules of conflict, unquestionably confirms what we have already decided that this is not a real conflict between laws, but “hesitantly” among several solutions. This analysis also refutes, again and again, the idea that the rule of conflict should resolve the overlap of areas of law in terms of where some writers say, or give legislative jurisdiction to a particular law. That analysis may shed light on the corner of the selection officer.

The second requirement

Determine the legal system for the selection officer corner

The importance of the selection officer: We mentioned that the selection officer, or attribution, is the second pillar of the internal or intrinsic pillars of the base of conflict. He seems to be the pole of that rule. We say that it is the pole of the conflict, given that the first pillar is made by reality and dealings between individuals or the third pillar, ie the law applicable, made by the foreign law. The choice officer shall be determined by the maker of the rule of conflict in the State of the judge, in order to reflect his preference for this or that law, and to achieve “justice and legal security,” as he understood it, for relations with a foreign element.

In order to determine the legal system of the selection officer, several issues need to be considered:

First, the selection officer analysis:

It is not exaggerated to say that the selection officer is the *L'etiquette*, under which the law is to be enforced, discloses the regulator’s preference for the latter, introduces it to the other laws to which the relationship in question relates and enforces its solutions and rules to regulate that relationship.

Origin and source of the selection officer: The selection officer derives from a “legal idea” related to the elements of the relationship or association for which a future conflict is perceived to arise, and it is known that any relationship or association consists of three elements: parties, place or subject and cause or splinter event. That relationship or association is originally a realistic relationship or association, and the legal description is arranged when regulated by the law.

How, then, does the selection officer derive from the elements of the legal relationship? () On the part of the parties, *Les parties*, it is noted that the most important elements in the relations that relate to the person, or so-called personal status relationships such as: eligibility, marriage and de-

scent, alimony ... It is obvious that the regulator selects the selection officer based on the element of parties, as The element that represents the center of gravity in the relationship, taking the nationality or domicile of the person, spouse or child as an officer to choose the applicable law. The law of the State of the person's nationality is that law. This is what Egyptian law did when it made the nationality officer entrusted with the renewal, and the law applicable to personal status matters was chosen in articles 11 to 17 of the Civil Code.

In terms of the element of the store L'objet, his role is highlighted mainly in the area of things, the place of financial dealing, or money in general. The regulator usually estimates that matters of ownership and transfer of rights in kind over funds are more closely related to the law of the State in which the property in question is located, than any other law, and takes from the positions of money an officer to choose the law applicable to those matters. The law regulates that the property and all other rights in kind apply to the law of the location of movable or real estate. This is what most legal systems have done, including the Egyptian law (Article 18 civil).

On the one hand, the cause of La cause, or the fact that created the relationship or bond between the parties. It seems to be the element that is qualified to provide the regulator with the selection officer, given the difficulty of concentrating it spatially. The will occupies the center of gravity in legal acts, or agreements and contracts in general, and therefore deserves to be taken as an officer to choose the law applicable to those actions. The law of will, which is chosen by the parties, is that law. Material incident and harmful or beneficial action are also of particular importance in the area of non-contractual civil liability. We find that that responsibility is more closely related to the law of where that incident or action occurred. It is taken from that place an officer to choose the law applicable, we say that the responsibility for harmful or beneficial work applies to the law of the country in which the work establishing the obligation occurred (art. 21 Egyptian civilian).

Nature of the selection officer: If the selection officer derives from a "legal idea", is he himself a "legal idea"?

Some argue that there are legal and other realistic controls. It is legal controls, nationality and domicile, and the place of execution of the contract. Realistic controls include the location of movable or real estate, the place where the malicious act is committed, the place of concluding a certain act. This view, however, seems inaccurate, since it did not indicate the basis for such discrimination. Is it the physical nature of the officer? If so, why

did he mention the place between realistic controls? And why an officer in question did not add legal controls, given that there were acts considered to have been concluded in a particular place, that is, the law that he considered as such, such as contracts concluded on board an aircraft or aircraft or the back of a ship both passing in free space or The high seas, or contracts signed between absentees? .

We believe that the selection officer, or attribution, is always a “legal idea” Notion de Droit originally derived from reality, but the law considers it or adopted, for the purpose of a particular, it becomes “legal”. Citizenship is a characteristic of belonging to a particular country, and the habitat is the place where the person usually resides, and the location of money is the place where the money settles The codified uses the idea of nationality or home or location is not to achieve its objectives in the legal branch to which it belongs to public international law , Or civil law, but to achieve a different technical objective consistent with the function of the conflict rule, namely, the selection and determination of applicable law.

This analysis confirms that the idea of a selection officer, as a legal idea, consists of two elements: the real element *Element de fait*, and the legal element *Element de Droit* Take, for example, the officer of nationality, the realistic element is the person’s nationality of a particular state, the legal element is the nationality itself as a legal system The legal element is the idea of the location, that is, the space in a country where the money resides, and the real element is the existence of the same money in the territory of a particular country. The legal element is the idea of the homeland as a link between the individual and the territory of that State.

The distinction between the *de facto* element and the legal element of the selection officer is stated in a statement that the first element can be changed by individuals or controlled in some cases by the nationality officer, national, location of movable and the will of contractors. The legal element is always constant and does not change the fault of individuals. It is only the coder who owns that change, defining the legal concept of a nationality relationship, location of money, or domicile. It also has the possibility of replacing the idea of nationality with the idea of home in building the rules of conflict for personal status issues, for example (), and here arises the problem of temporal conflict of rules of conflict, which we will address later.

The ability of individuals to control the *de facto* element of the selection officer leads to the application of a law other than the one that would have been applied had it not been for such a change, and raised some special

problems, such as circumvention of the law, and mobile conflict.

Second: the interpretation of the selection officer:

This precise technical composition of the selection officer makes its interpretation very important. With regard to this interpretation, several points are raised, including:

The law governing interpretation: Which law is governed by the interpretation of the selection officer? If, for example, the rule of conflict stipulates that matters of inheritance and inheritance are governed by the law of nationality of the deceased, or the law of his or her last domicile Under what law is the selection officer, nationality or domicile interpreted?

It may be argued that the interpretation of the selection officer is subject to the law chosen by that officer, especially in the case where the law is foreign. As long as the latter is considered to be the most appropriate to apply to the subject of the conflict, the interpretation of the officer to whom he has been guided must not escape his scope.

For several reasons, however, this claim is weak. The interpretation of the selection officer as a matter arises not only before the application of the rule of conflict and the knowledge of the law applicable, but also when the rule is formulated by the regulator or judge, that is, when creating the rule, where it is necessary to know the truth of the choice officer who is likely, in the eyes of the regulator or judge, The preference of a law over another. The second reason is that the selection officer is a cornerstone of the conflict rule, the latter being a national rule that is inseparable from other rules of the national legal system, and should be subject to its provisions, including interpretation.

According to the foregoing analysis, in its interpretation the selection officer is governed by the Judge Act which determines the dispute of an international character.

Perhaps the second reason cited is sufficient to justify the competence of the judge's law to interpret the selection officer at the base of the conflict. We therefore reject the view that justifies that jurisdiction as part of the qualification process necessary to give effect to the rule of conflict, and since that process is governed by the judge's law, the latter is competent to interpret the selection or attribution officer.

In fact, adapting in the technical sense, and what we will see is to determine the nature of the issue in order to know the rule of conflict to which it applies pre-implementation of the rule of conflict, while determining the meaning of the selection officer comes after the full adjustment or even before it, and it relates to the construction of the rule in question, not the

issue in question Conflict. In addition, the adaptation focuses on the relationship or association in question, the effects of marriage, the form of behavior, inheritance, ie, in relation to ideas of reality, and the interpretation of the selection officer is on one of the rules of national law. If the adaptation of a relationship or association could be contending with more than one law, it was inconceivable as to the interpretation of national legal norms, including that of conflict.

Scope of the law governing interpretation: But are all the controls of choice in their interpretation subject to the law of the judge? It can be argued that there is a general rule whereby the controls of selection or attribution are subject in their interpretation to the law of the judge.

Thus, the notion of "home", for example, as an officer for the choice of law applicable to some conflict-of-law issues: the subject of international contracts (Article 19/1 Egyptian civilians) or the form of legal acts (Article 20 civilians), is defined in accordance with the principles set forth in Article 40. And beyond the Civil Code.

The same is true of ideas: the place of disposition, the location of money, the place of occurrence of the work creating the non-contractual obligation.

Exceptions to the scope of the relevant law: On the general rule referred to, there are two important exceptions:

First, it relates to the idea of nationality as an officer of choice, and we distinguish between two things: first, the idea of nationality itself and its concept, ie, the legal element in the selection officer, and second, the realistic element in the idea of nationality, that is, whether a person has the nationality of a particular State or not.

The first is the legal element, ie the general concept of the idea of nationality, i.e., as a legal system established by the State to determine the corner of the people in it, and through which the individual acquires the status of affiliation to it, it does not differ from state to state, nor is it subject to the law of the judge.

The second, the *de facto* element of nationality, is governed by the law of the State to which the person, party to the relationship in dispute, is invited to belong, in order to avoid questioning the right of any State to regulate its nationality and to determine who its nationals are. The application of the Judiciary Act may result in a person being considered to have the nationality of a particular State, while that State does not. This exception is imposed by customary rules of international law. Article 2 of the Hague Convention of April 12, 1930, on certain issues of conflict of laws in nationality pro-

vides that “every question of whether an individual has the nationality of a State shall be resolved in accordance with the legislation of that State. The state “ .

Without the analysis we have proposed, some scholars have been silent on this exception to the officer of nationality, [30] others decide, inter alia, that the interpretation of a nationality officer is subject to the law of the State to which he or she claims to belong.

The second exception relates to the existence of a conflict rule convention, which comes from an international agreement.

First, the Convention itself should contain a clear definition or interpretation of the selection officer, for example the Hague Convention of 15 June 1955 on the Conflict between Citizenship Law and the Law of the Hometown, article 5 of which provides an interpretation of the citizen as a choice officer, in which it is considered to be home in the concept of this Convention. Ordinary residence “per person. In such an obligation, the judge of the State party to the Convention must respect this definition of the Convention.

Second, the Convention is devoid of any definitions, but refers to the law of a particular State from which the definition of a selection officer derives. For example, the Hague Convention of 5 October 1961 on the Conflict of Laws in the Form of the Commandments, and having adopted the recommended domicile officer, decided to refer to the definition of the domicile of the recommended domicile the “law of the state in which it was”.

In the two previous hypotheses, the judge must comply with the provision of the Convention as long as his State is a party to the Convention, and the choice is not interpreted in accordance with his law.

Censorship of interpretation: Finally, the question arises: Is the selection of the officer of the selection of the issues of reality that are involved in the launchings of the court of first instance, or questions of law question de Droit subject to the control of the Court of Cassation?

The rule of conflict in a particular State shall not be arbitrarily set, in order to emulate other States, or to fill a legislative vacuum in, for example, its legal system, but rather from the considerations required by the policy of legislation adopted by the national law. To be aware of these considerations, the validity of the interpretation and application of the selection officer required to “diagnose” the applicable law is controlled.

It is a misinterpretation of censorship that the judge should act, for example, on the effects of marriage, for example, the law of the State of the husband’s domicile, while the applicable rule of conflict speaks of “domicile”

rather than “domicile”. Or that the civil liability for harmful work is governed by the law of the wrongful occurrence, whereas the selection officer speaks of the law of the order of the damage, in the hypothesis that the damage is not caused at the place of the wrongful occurrence.

Defining the concept of a selection officer, or its interpretation, seems to be a question of law, not a question of reality. First, the judge is not exposed to the choice of the officer to verify the circumstances or material elements related to the facts of the conflict, but this exposure usually occurs at a stage prior to the realization of the rule of conflict, the adjustment phase. We have already pointed out that the interpretation of the selection officer is not an adjustment. The second is that the same officer of choice is a “legal idea” and is a cornerstone of a “legal” rule of national law that is the basis for conflict.

All this entails recognizing that the error in the interpretation of the selection officer is a mistake in a legal matter, which requires the control of the Court of Cassation, which ensures the correct interpretation, interpretation and application of the law.

Such oversight may seem necessary given the considerations we see below: Third: abstraction in the selection officer and the truth:

Double wording and abstraction: A fundamental characteristic of the rule of conflict is that it is a double or two-sided rule, in the sense that, as you may choose the law of the judge to be applicable to the matter at issue, it also chooses a foreign law, if it appears to be more closely related to that matter. Justice and legal security.

The dual wording of the rule of conflict requires that the officer of choice, when formulated abstractly, comes in the sense that he does not specify a specific law, but only as a specific, instead of saying, for example, that “real estate in Egypt is subject to Egyptian law,” we say. Choice, “real estate is subject to its location law” or “real estate law applies to the country in which it is located.” Also, instead of saying that “the civil status of Egyptians and their eligibility applies to Egyptian law” or “applies to the civil status of Saudis and their eligibility to Saudi law,” we say, this is abstraction in the wording of the selection officer, “applies to the civil status of persons and their eligibility the law of the state to which they belong “.

Abstraction does not mean impartiality: This abstraction in the formulation of the selection officer leads, at first glance, that the creator of the moment when creating the rule is neutral Neutre, that is, not based on pre-conceived considerations and special motives, in the inclusion of the rule of conflict of this selection officer without the other.

Although some jurists have defended this trend, it was decided that the wording of the selection officer should not be based on preconceived notions or considerations but should seek just convenience and justice considerations.

In fact, the codified, or the judiciary in the countries where the judiciary advances, formulate the rules of conflict, when trying to choose one or another of the controls or selection, to respond to different interests and diverse, and reconcile them all:

On the one hand, the selection officer may come with a view to achieving the special interests of individuals dealing in the field of international trade and other private links of foreign origin, without forgetting the considerations of stabilization and legal security of those links and transactions. For example, an officer of the will in the field of voluntary legal acts, and an officer in place in the form of such acts.

On the other hand, the selection officer may come in order to protect the higher interests of the national society and achieve the objectives of the legislative policy. For example, we find that in countries that are overflowing with population, the introduction of the officer of nationality, in order to maintain the attachment of nationals to them, and to expand the scope of application of national law on them even in their relations that take place beyond national borders. This is unlike non-human states, which adopt the domicile officer, so that they can impose their authority on foreigners who are endemic to them and pave the way for their integration into their national community.

On the one hand, the selection officer may come to meet the general interests of the state society, and achieve the desired legal cooperation between the legal systems of different countries, for example, the officer of the site of money, it is noted that it responds to realism effectively in resolving conflicts of laws () and also responds to considerations of the sovereignty of each state over its territory Of funds.

Abstraction and Legislative Policy In addition to the above, it can also be said that selection controls are often saturated with the spirit of national legal systems, Esprit des institutions, and legislative policy directions of the national law.

In terms of being influenced by the spirit of national legal systems, for example, in matters of the effects of marriage, the Egyptian law tended to give priority to the officer of the nationality of the husband without the wife (art. 13/1 civilian). This is in line with the stewardship of men in the Islamic and Eastern family in general. In contrast, in States claiming to defend the

principle of equality between men and women, the officer of choice is the common nationality of the spouses and their place of habitual residence () or domicile.

In response to legislative policy directions, the codified may adopt a selection officer to ensure that the application of national law protects its citizens and the social construction of its society. For example, the text of article 14 of the Egyptian Civil Code, which states that “in the cases stipulated in the previous two articles, if one of the spouses is Egyptian at the time of the marriage, the Egyptian law shall apply only with the condition of eligibility for marriage.” The regulator may adopt an officer who leads to the implementation of a law that achieves what he wants. In Belgium, for example, prior to the promulgation of the Act of 27 June 1960, the legalization was largely hatred and divorced, in keeping with the Catholic origins of marriage. cumulative laws, leading to the dissolution of marriage often ().

Abstraction: The above considerations, among others, have argued that the rule of conflict has departed from its abstract nature of seeking the most appropriate law to govern disputes of international relations of individuals by concentrating those relationships in a particular legal system and becoming a norm. Caractere substantial, that is, looking for a law with a specific content or objective solution that translates the considerations referred to. This is further clarified when examining the characteristics of the conflict rule.

Fourth: Time Limitation for the Selecting Officer:

The necessity of time limitation: As we are discussing in the analysis of the selection officer, we pointed out that the “realistic element” in some selection controls, individuals can control and change it, from that realistic element in the nationality, home, and location of the movable Designing the Work of the Rule of Conflict The determination of the element of time in the selection officer, ie the time space in which it operates, is an integral part of the support officer. It is not enough for the selection officer to be the nationality of the husband or his domicile, but must accompany him, if his nature requires it, specifically for the time of his adoption. In the period between these two times.

Abstract

The purpose of the rule of conflict is not to assert or deny the disputed right But to determine the law applicable to the disputed shop, The disputed rule does not have its own legal pillars, It shares the rest of the laws However, it is unique in the specificity of the foreign element It is therefore based on two main pillars, namely purpose and Judgment Through the relationship

between the two pillars of purpose and Judgment , it is possible to arrive at what is the criterion to choose the applicable law.

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