

# Conflict of Law

Session one

## **Emergence of conflict of Law(Raison d'être )**

- ❑ Because of economic, such as commerce; social, such as marriage; political; natural catastrophe; even war, and some other related phenomena: people move or travel from state to state or from jurisdiction to jurisdiction.
- ❑ This fact results in the creation of transactions connected with more than one jurisdiction.
- ❑ This inevitably gives rise to disputes, as in any legal transactions. But what is unique about this dispute is for the nature of the issue is inter-provincial or transnational. (Sovereignty of state is ???)

## Definition

- ❑ Many scholars have tried, but no agreeable definition
- ❑ Reasons;
  - ✓ Different considerations by different writers
  - ✓ Varying nature and scope in different legal systems
- ❑ *As Posted on Business Directory.com*

*Conflict of law is is Part of local legal system that governs the selection of appropriate law, and validity of judgments and jurisdictions of local and foreign courts, in civil cases containing a foreign element,*

# Nomenclature

- ❑ No uniform labeling /nomenclature

## Example

- **In Europe:** “Private International Law” widely in use,
- **In common law world:** “Conflict of Laws” widely in use.

- ❑ Why???

Because none of the names given to the subject is wholly accurate or properly descriptive.

# Critics on Nomenclature

## Conflict of Law

- The word *provoke* a conflict that exist between two or more systems of law, however...
- It suggests that laws “conflict” and by hypothesis there is a mechanism
- It literally refers only to a part of PIL that concerns legislative competence or choice of law problems.

## Private International law

- This title lead one to believe that PIL is part of international law
- The title might suggest that it is in some way concerned with the relations between states.
- **International Private Law???**

Nature(Characteristic  
feature ) of conflict  
of law

## 1. Existence of foreign element:

- It purports to provide *systematic solutions to problems* that are inevitably encountered when a case containing a **foreign element** is brought before a court of law
- A foreign element refers to:
  - i. *Personal*:
  - ii. *Material*:
  - iii. *Local*:

**NB**

**Foreign element exist in**

- International conflict of law
- Interstate conflicts
- state - foreign country

....Nature of conflict  
of law

## 2. Conflict of Law deals with most private cases of *civil and commercial*.

- ***Exclusion***: public cases like criminal, revenue, customs, constitutional and administrative cases.
- private international law Vs. public international law

....Nature of conflict  
of law

### **3. Conflict of Law is part of the national law of a state,**

- Conflict rules are legislated by national law making organs and are intended to be applied by courts of the state making them.
- There are, however, some multilateral treaties that establish rules of wider application on some subject matters. In addition, there exist some customary conflict rules which are recognized everywhere.



...Nature of conflict  
of law

#### **4. Conflict of law is Rule attributive of competence:**

- Conflicts law does not by itself decide a case
- It does not furnish a direct substantive solution to the dispute
- It carries the case only half a way until a certain category of law is chosen
- We cannot talk about conflicts law rules after we choose the applicable system of law.

...Nature of conflict  
of law

## **5. Unilateral or bilateral rule**

- ❑ A conflict rule may be either unilateral or bilateral. What we are saying here is that if one closely examines the conflict rules of diverse systems, one will find that they present themselves in either a bilateral or a unilateral form.

# Subject matter/ scope of Conflict of law

