

PRIVATE INTERNATIONAL LAW

3 issues:

- Jurisdiction, i.e., what court can hear the claim?
- Rules, i.e., what rules will the court apply?
- Recognition and enforcement, i.e., will a judgment of a foreign court be recognized and enforced in another country, where, for example, the defendant's assets are.

GENERAL JURISDICTION:

Each state determines when it will hear a lawsuit.

If both parties agree to take a case to a jurisdiction, that jurisdiction is competent. But there are many exceptions. Some countries choose to close their courts' doors when the case has no more substantial connection than the parties' consent. For example, New York courts tend to admit contracts cases when both parties consent to New York jurisdiction but not torts. France allows lawsuits filed by French nationals against a foreigner in France.

Individuals

Common Law: Traditionally, the lawsuit may be brought where the defendant is served with process. But in modern states, an individual may be sued in his state of residence.

Civil Law: the general jurisdiction to sue a person is that of his or her domicile or residence.

Corporations

- **Common Law:** A corporation may be sued in its state of incorporation. In the US, a corporation may also be sued in any state where it conducts business.
- **Civil Law:** The place of administration or management (sieve or sede), which may be different from the place of incorporation.

RULES OF PRIVATE INTERNATIONAL LAW

TORTS

- **Common Law:** generally, lex loci, i.e., where the tort was committed.
- **Civil Law:** where the tort was committed.

CONTRACTS

- **Common Law:** Express choice: The chosen law will govern the contract, provided the choice is bona fide (there are some connecting points), legal, and it does not contradict public policy. No express choice: the law with which the transaction has its closest and most real connection. Connecting factors include: place of contracting, place of performance (very important), place of residence,

place of business, etc. In online consumer contracts, the applicable law is the law of the consumer's residence.

- In Canada: (i) express choice; (ii) implied choice; (iii) no express or implied law: the proper law is objectively determined by looking for connections to foreign legal jurisdictions. There may be different foreign laws to govern different aspects of the contract, e.g., contract formation and contract performance.
- **Civil Law:** Express choice: The chosen law will govern the contract, except for consumer contracts and individual employment. No express choice: the law of the country with which it has the closest connection (a severable part of a contract with which another country has a closer connection may govern by way of exception). Connecting factors: habitual residence –individuals- or central place of administration –legal entities- of the performing party, and location of immovable property.

MARRIAGE

- **Common Law:** Lex loci celebrationis (place of celebration of marriage) for the formal validity of marriage and the law of each party's antepenultimate domicile for capacity (age, subsisting marriage, etc.) but in some cases courts take into consideration the intended matrimonial home.
- **Civil Law:** Capacity for marriage: law of nationality or habitual residence. Formalities: Lex loci celebrationis. Divorces may be brought in the state of the plaintiff's domicile.

JUDGEMENTS IN REM

- **Common Law:** Lawsuits involving land may be brought where the land is located.
- **Civil Law:** Lawsuits involving land may be brought where the land is located.

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

Recognition: the recognition of the validity of a foreign judgment.

Enforcement: an order for an action arising from a foreign judgment, e.g., sale of property, foreclosure, freezing an account, etc.

Some countries require the transformation of a foreign judgment into a domestic one. Some states demand that a new procedure be initiated again, and others simply inquire about the regularity of the foreign proceedings.

Requirements for enforcement and recognition in both common law and civil law states. All foreign judgments are enforced and recognized, except when:

- (i) Foreign state lacked jurisdiction, according to the laws of the state where recognition is sought.

- (ii) Fraudulent proceedings.
- (iii) Public Policy.
- (iv) Reciprocity (some civil law countries only).