# Renvoi: a dying ideology. Is rejuvenation essential?

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**DISSERTATION**

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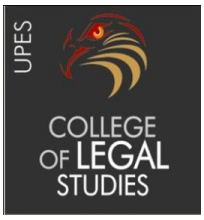


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# DECLARATION

I declare that the dissertation entitled **"Renvoi: a dying ideology. Is rejuvination essential?"** is the outcome of my own work conducted under the supervision of Prof. Anuradha Nayak, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Signature & Name of Student
Date

# CERTIFICATE

This is to certify that the research work entitled **"Renvoi: a dying ideology. Is rejuvenation essential?"** is the work done by Anvi Deria under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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# ABSTRACT

The task of a court confronted with a choice of law problem, conventionally conceived, is to determine which of several different jurisdictions laws applies to the case before it. I The question of what law applies is a question the court answers by consulting the law of its own state; that is, it is a question of forum choice of law doctrine. If the forum's choice of Law rules direct the application of forum law, the court proceeds to apply the forum's substantive, or internal law: the tort, contract, or other law that determines the parties' substantive rights.

The forum's choice of Law rules might also direct the application of another state's law. At this point a question arises. Should the court, when instructed by forum law to apply the law of another state, apply that state's internal law, or should it apply the state's entire law, including its choice of law rules? The latter might seem the obvious choice-applying a state's law, after all, presumably means reaching the same results that the courts of that state would reach but it opens the door to an alarming possibility. Suppose that State A's law directs the application of State B's law, and the State A court under- stands this to mean the entirety of State B law. If State B's choice of law rules point back to State A law, it is natural again to understand this as a reference to the entirety of State A law, and an unending series of references back and forth arises.

The doctrine that a reference to the law of another state is a reference to the entirety of that state's law is the doctrine of renvoi, and the question of whether it should be followed whether, in choice of law terminology, the renvoi should be "accepted" or "rejected" stands out even among the notorious esoteric of conflict of laws as unusually exotic and difficult. For nearly two hundred years it has troubled the courts, driving judges to distraction and scholars to treatises on deductive logic. Though "juristic speculation has been almost infinite," scholarship has not settled the matter; much of it, "upon analysis, is seen to consist of nothing but dogmatic statements of the result desired to be reached." In more recent years, the controversy has abated, as scholars seem to have accepted the claim, put forward by proponents of modern policy oriented approaches to choice of law, that these newer approaches offered a decisive answer. But the claim is untrue, and the problem persists. The solutions advanced by the policy oriented approaches are

essentially the same as those offered by the territorialists, and they suffer from the same defects. Consequently, the dispute over renvoi should be a live one.

At least, it should be a live one according to the conventional understanding of the nature of the choice of Law process. My goal in this Article is to see both the sides in the dispute and also to argue that renvoi should be accepted or rejected. I would also try to shed some light on what kind of a problem renvoi is, why it occurs, and what the problem might tell us about choice of law more generally and to find out a possible way to resolve it.

**Keywords:** Renvoi, Conflict of Laws, Choice of laws

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# 2. INTRODUCTION

Private International law or Conflict of laws constitutes the legitimate or legal standards and guidelines representing universal private relations. It along these lines offers ascend to that branch of law which manages situations where some significant certainty has a geographic association making an "outside component", and that brings up an issue with respect to locale and which law applies i.e. emerges when there are one or all the more legitimately pertinent remote components, bringing about two or more diverse laws contending in respect to a man, demonstration or certainty, or to a solitary thing and there is uncertainty about which law ought to apply.

Being a standout amongst the most hypothetically difficult ideas in private international law, eras of contention of laws researchers have discussed the inquiry and idea of Renvoi. It is the moment theme under study in the proper way of the research paper. Renvoi is a French expression which actually implies “sending back”. In exact terms, when the decision of law procedure indicates a gathering court another purview's law, the inquiry that emerges is: what amount of that other locale's laws ought to apply? Does the reference to the next law incorporate that purview's decision of law standards, or, on the other hand, does it incorporate just the ward's "inward law" standards? In the event that the reference incorporates both interior law and clashes standards, the outside clashes standards might point the inquisitive court back to the gathering's law or to a third ward's law. Renvoi includes a gathering ought to counsel the decision of law tenets of different locales.[1]

Where a matter before a court has an international element, the court will initially apply Private international law rules of the jurisdiction it is located to decide which law applies. If A’s law is the applicable law, the court will apply A’s domestic law. However, if the applicable law is that of another jurisdiction (B) the court must decide whether to apply B’s domestic law or B’s including B’s own PIL rules. If the court decides on B’s Private

[1] Roosevelt, Kermit III, "Resolving Renvoi: The Bewitchment of Our Intelligence by Means of Language" (2005). Faculty Scholarship Paper 649.
Http://scholarship.law.upenn.edu/faculty_scholarship/649

international Law rules, and B's Private International Law rules refer back to the law of A or refers to a 3rd jurisdiction this reference is called Renvoi.[2]

Authors and experts like P.R.H. Webb., Brown, Morris and Dicey, however have recommended in their work that the idea of Renvoi is not an essential and noteworthy idea to the extent its amount and quality goes and have expounded it by saying that in connection to Renvoi just two matters are required to be considered specifically its importance.

The task of a court confronted with a choice of law problem, conventionally conceived, is to determine which of several different jurisdictions' laws applies to the case before it. The question of what law applies is a question the court answers by consulting the law of its own state; that is, it is a question of forum choice of law doctrine. If the forum's choice of law rules direct the application of forum law, the court proceeds to apply the forum's substantive, or internal law: the tort, contract, or other law that determines the parties' substantive rights.[3]

The discussion's decision of Law standards may likewise coordinate the utilization of another state's law. As of right now an inquiry emerges. Should the court, when prepared by discourse law to apply the law of another state, apply that state's inside law, or would it be fitting for it to apply the state's entire law, including its choice of Law precepts? The last might show up the obvious choice applying a state's law, in light of current circumstances, clearly infers accomplishing the same results that the courts of that state would reach nonetheless it opens the route to an irritating credibility. Assume that State A's law coordinates the utilization of State B's law, and the State A court under-stands this to mean the total of State B law. In the event that State B's decision of-law tenets point back to State A law, it is regular again to comprehend this as a source of

[2] Olorunfemi Eyitayo Temilolu, Joseph Naomi Ojunugwa, Liman Ayodele Bilikis and Oladapo Olayemi The Significance Of Renvoi To Private International Law Particularly As Regards Partial And Total Renvoi (Tuesday, 27 January 2015)
Http://legalrescue.blogspot.in/2013/01/the-significance-of-renvoi-to-private.html

[3] Roosevelt, Kermit III, "Resolving Renvoi: The Bewitchment of Our Intelligence by Means of Language" (2005). Faculty Scholarship Paper 649.
Http://scholarship.law.upenn.edu/faculty_scholarship/649

perspective to the sum of State A law, and an unending arrangement of references forward and backward arises.

The precept that a reference to the law of another state is a reference to the total of that state's law is the tradition of renvoi, and the subject of whether it should be taken after whether, in choice of-law wording, the renvoi should be "recognized" or "releases" rises even among the popular exclusive of conflict of laws as inquisitively abnormal and troublesome. For about two hundred years it has beset the courts, driving judges to diversion and researchers to settlements on deductive rationale. However "juristic hypothesis has been almost limitless," grant has not settled the matter; quite a bit of it, "upon examination, is seen to comprise of only one sided articulations of the outcome sought to be come to."

In later years, the contention has lessened, as researchers appear to have acknowledged the case, set forward by defenders of cutting edge strategy arranged ways to deal with decision of law, that these more up to date approaches offered an unequivocal answer. Be that as it may, the case is untrue, and the issue continues. The arrangements progressed by the strategy situated methodologies are basically the same as those offered by the territorial people, and they experience the ill effects of the same deformities.'

Therefore, the disagreement about renvoi ought to be a live one. At any rate, it ought to be a live one as per the customary comprehension of the way of the decision of-Law procedure. My objective in this Article is not to take a side in the question not to contend that renvoi ought to be acknowledged or dismisses. It is rather to reveal some insight into what sort of an issue renvoi is, the reason it happens, and what the issue may let us know about decision of law all the more by and large. The idea of Renvoi in the Conflict of Laws and the degree of its application. To get a more profound comprehension and a basic examination of the idea of renvoi and its place in the private international law, the analyst proposes to investigate the perspectives like Doctrine and Approaches of renvoi, its specific types of single and double renvoi, legal reactions relating to the idea of renvoi.

# 3. RESEARCH METHODOLOGY

## 3.1 STATEMENT OF PROBLEM

The Doctrine of Renvoi is a legal doctrine which applies when a court is faces a conflict of law and must consider the law of another state, referred to as private international law ("PIL") rules. This can apply when considering foreign issues arising in succession, planning, marriages and in administering estates.

The word “Renvoi” comes from the French “send back” or “return unopened”. The “Doctrine of Renvoi” is the process by which the court adopts the rules of a foreign jurisdiction with respect to any conflict of law that arises. The idea behind the doctrine is that it prevents forum shopping and the same law is applied to achieve the same outcome regardless of where the case is actually dealt with. The system of Renvoi attempts to achieve that end.

In this paper the main area of research would be the main difficulties in the application of the doctrine. The doctrine of Renvoi is not acceptable worldwide and there are different countries having different way of usage due to which it is losing its effect.

So, to be precise, the following difficulties shall be dealt with in this research:

- A major difficulty in the application of the renvoi, which is highlighted by experts like Dicey and Morris have highlighted according to them the major difficulty is the unpredictability of outcome as also highlighted in the case of Re Duke of Wellington where Wynn-Parry Justice also commented that the doctrine makes everything dependant on the evidence of foreign experts. It requires proof not only of foreign choice of law rules, but of foreign rules about renvoi. Also, such unpredictability is due to the reason that in the continental nations, the decided cases of the court of first instance are not considered as authorities and are not binding as authorities to be followed and the doctrine has a tendency to change according to times.

- As there is no unification of Private international law which indeed is the problem and so the application of renvoi is not possible. There is a conflict of laws. There is no recognition even of the factor to decide which law should apply and what should be the connecting factor i.e. Nationality or Domicile.
- the application of the doctrine required to familiarise himself with

  a) The foreign internal law

  b) The relevant choice of law rules

  c) The policy, if any of the foreign law towards the doctrine law towards Single renvoi. This limitation of the doctrine of renvoi is that it normally involves calling detailed expert evidence as to the state of foreign law; normally, parties will seek to avoid such a course.

## 3.2 OBJECTIVE OF STUDY

The concept of Renvoi in Private International Law is very essential. The concept of Renvoi is followed differently in the whole world. There are different types of Renvoi which are followed in a different manner and in some countries it is not at all followed. As the concept of renvoi is not uniform it is now considered as a dying ideology, which the world is now not following. In this research paper we will try to know that why this ideology is considered as dying and what steps can be taken to rejuvenate it. As the concept is very important and play a important part in any individuals life so the rejuvenation of this concept becomes important. The author further seeks to identify the various lacunas, and loop holes that are still required to be repaired, the various remedies and the promotions which can be adopted or needed to be done for the sake of rejuvenation.

## 3.3 SCOPE OF RESEARCH:

This thesis would deal with the regulatory and legal framework relating to certain aspects of of renvoi. Though the aspect and issues relating to the doctrine and its opposition by

different nations shall be covered under the thesis, the reasons shall also be discussed so as to see why it is called a dying ideology. There will be certain ways to make this doctrine applicable again and for that purpose there will some suggestion made. Thereafter to provide the thesis with practical approach certain case studies are also included under its ambit. Though the case studies shall be limited in a way to see how important it is to have different benefits of the doctrine which will show its importance and necessity.

## 3.4 HYPOTHESIS:

This thesis at the very basic level will deal with the issue of renvoi, its recognition and applicability. As there is a series of problems which occur world wide and the recognition of the doctrine not taken similarly there arises many problems to apply the doctrine. For the international smoothness there is a strong need to have a similar interpretation of the doctrine in a similar way. There has been a change in the method of dealing with the problems which is faced by different countries in one way or the other and theses countries does not have a similar approach which they adopt. The concept of renvoi is prevailing in different countries but differently which is the cause of its diminishing applicability.

As we know that there occur different problems with the doctrine and it is important to have a similar approach to it. All the different nations need to have similar approach or a similar view which might help in solving the problems which are faced by nations. A law or a treaty can be made which can be rectified by the nation so that can help these nations to overcome this problem but for that too it is necessary for the nation to recognise this doctrine and then move forward in a similar direction. In this paper the researcher shall go through these policies that facilitate the growth, development and applicability of renvoi internationally and shall find out that how are these challenges handled with the help of treaties. And thereafter the paper will focus on the budding renvoi laws in all the countries which are affecting the people and countries all over world.

As the international trade and commerce is increasing day by day and along with international trade and commerce the migration percentage is also increasing therefore, it was essential to create a policy and regulatory environment that favours the development of renvoi and harmonises national approaches in diverse areas so as to resolve the conflict between the nations.

In this paper the researcher shall go through with the concept of renvoi and difficulties which are faced by different nations, the reasons for these difficulties and the concept of these nations and also ways which might facilitate the development of the doctrine of renvoi and shall find out that how are these challenges handled with the help of these policies.

The paper shall conclude with the observation that though there are no laws and policies internationally and on national basis the countries who follow the doctrine, still there are some loop holes and lacunas which are becoming a concern in the development and applicability of the doctrine of renvoi. And with the help of certain case studies the researcher shall attempt to find out the precise reasons behind such lacunas. These loop holes are required to be curbed so as to smoothen the applicability of the doctrine on the countries.

## 3.5 METHODOLOGY:

The methodology for research for the completion of the research paper would be analytical or descriptive, applied and comparative. The methodology would be descriptive because the different states approach and established theories would be stated or mentioned in the paper. The researcher shall also use the applied research methodology as the researcher is attempting to reach probable solution for the issues relating to renvoi. And finally the comparative method of research would be to facilitate the descriptive method, in this paper the different countries shall be compared as to see their approach, ideas and their interpretation of this doctrine. The research methodology for this paper requires gathering relevant data from the specified documents and

compiling databases in order to analyse and compare the material and arrive at a more complete understanding of the concerned topic that whether a certain harmonisation proposal could work, taking into account other important divergences in the legal systems concerned, with the help of various statutes, norms, regulations, scholarly articles of different authors, journals and books to. This project will utilize the deductive method of research as the general findings have in the end been concluded to lay about a result summing up the entire research.

## 3.6 LITERATURE REVIEW

The main objective of this thesis is to analyse the concept of Renvoi and its application and effect on different nations and also the reasons why it is difficult to apply the doctrine of renvoi. For this purpose a number of article and books have been consulted. The general text of this thesis consists of text books, articles and publications and statutes. The above mentioned materials shall be scrutinized so as to reach a conclusion. The books and articles referred are discussed below, in short:

1. **Renvoi: a dying doctrine by Jenny Bird**

The doctrine of renvoi in relation to cross-border succession issues, but whether or not the doctrine should be applied in this and other areas of law is perhaps something that we do not necessarily consider. In this article the author has talked about the concept of renvoi and when it is recognised and when it is not recognised. Renvoi or harmonisation of PIL rules is another thing which is discussed in the paper.

2. **The concept of Renvoi in the Conflict of Law by Abhishek Bharti (June 2008)**

The researcher proposes to look into the aspects like Doctrine and Approaches of renvoi 2, its specialized forms of single and multiple renvoi, judicial responses pertaining to the concept of renvoi from the courts of United Kingdom, United States of America and France .the judicial responses have special importance as the position before the courts can be looked into through the decisions only. The research paper is limited to the extent of focusing on the doctrine of renvoi only and not other concepts of choice of laws

involved in the private international law. Thus a critical and descriptive analysis of the doctrine will be done in the due course of the research paper.

3. **Renvoi Theory and the Application of Foreign Law: Renvoi in General by Ernest G. Lorenzen Yale Law School (01.01.1910)**

The main question which is analysed in this article was that: Must the judge when the law of the forum prescribes the application of a foreign law take notice of the rules governing the Conflict of Laws in such foreign country, and, if he must, in what sense and to what extent?

4. **Renvoi Theory and the Application of Foreign Law: Renvoi in Particular Classes of Cases by Ernest G. Lorenzen Yale Law School (01.01.1910)**

The main things discussed in this article was that-

- Whether there should be applicability of lex domicilii or lex patria.
- U.S., Germany, France concept of Renvoi.
- Different conventions relation to Renvoi.

5. **AN AMBITIOUS APPROACH TO *RENVOI***

The scope of the essay is to bring a concise overview of the aim of the doctrine, and show that it is, at least theoretically, possible to find a logical application for the doctrine to achieve its aim. For the purpose both the issues associated with, acceptance and refusal of the doctrine and focus on two important approaches: the policy analysis theory, which solves the problem by removing the doctrine from the area of conflict of laws, and one that argues for a prospective development of its application along with a secondary set of rules.

6. **RESOLVING RENVOI: THE BEWITCHMENT OF OUR INTELLIGENCE BY MEANS OF LANGUAGE by Kermit Roosevelt III***

In this paper the problem with renvoi is discussed along with some solutions. Different approaches were also discussed which are generally followed by the countries. The

different conventional approaches are also discussed so as to resolve the problem of renvoi.

## 3.7 RESEARCH QUESTIONS:

After analysing the existing literature on the proposed thesis. These are the research questions that the researcher has framed:

1. Whether the doctrine of renvoi is dead or still it is applicable?
2. Whether the doctrine of renvoi be universally accepted? Is its rejuvenation possible?
3. Whether there can be a unification of private international law and can it be codified? Can the conflict between the nations be resolved. Can renvoi have a deciding common factor of the application of law.

# 4. Meaning and scope of renvoi

## 4.1 Understanding renvoi

The Doctrine of Renvoi is a legal doctrine which applies when a court is faces a conflict of law and must consider the law of another state, referred to as private international law ("PIL") rules. This can apply when considering foreign issues arising in succession, planning, marriages and in administering estates.

The word “Renvoi” comes from the French “send back” or “return unopened”. The “Doctrine of Renvoi” is the process by which the court adopts the rules of a foreign jurisdiction with respect to any conflict of law that arises. The idea behind the doctrine is that it prevents forum shopping and the same law is applied to achieve the same outcome regardless of where the case is actually dealt with. The system of Renvoi attempts to achieve that end.[4] The noteworthy components or segments for the situation are isolated between the two nations e.g. France and England, such a case is the situation of contention of law for any court contesting. For instance, at the point when a British national living in France fails miserably intestate the issue of renvoi develops at whatever point the principle of the conflicts of law of France implies the law of remote country, however the dispute rule of the law of the outside country would have suggested the request to the "law" of the essential country or the law of about third country.

The accompanying case might serve to recommend the issue. Assume a national of the United States, once in the past an inhabitant of the State of New York, kicks the bucket domiciled in Italy, leaving individual property in the State of New York, and that an inquiry emerges before the New York courts regarding the circulation of such property The undeniable answer is : The lex fori having received the standard that the law of the home of the expired at the season of his demise should oversee the dispersion of his own bequest, Italian law is to be connected. Yet, what is implied by Italian law? Is the New York judge to apply the Italian statute of disseminations, or is he coordinated by the lex

[4] Pearse Trust (Blog) , The Rule Of Doctrine Of Renvoi Explained (May 12, 2014) Http://www.pearse-trust.ie/blog/bid/110454/The-Rule-Of-Doctrine-Of-Renvoi-Explained

fori to apply Italian law in its totality, i.e., including its standards administering the Conflict of Laws? Should the lex fori allude to Italian law in the last sense it would be found that in the Italian arrangement of Private International Law the lex patrice has supplanted the lex domicilii in the present occurrence. On the off chance that the inquiry preceded an Italian judge the individual domain would be circulated as per the law of the nation of which the perished was a native or subject at the season of his demise, that is, New York law.

Where a matter under the steady gaze of a court has a international component, the court will at first apply Private universal law principles of the ward it is situated to choose which law applies. In the event that A's law is the material law, the court will apply A's household law. In any case, if the material law is that of another ward (B) the court must choose whether to apply B's local law or B's including B's own PIL rules. On the off chance that the court chooses B's international Private Law standards, and B's International Private Law rules allude back to the law of a third ward or nation this reference is called Renvoi.

The tradition Renvoi was given early on jolt in the Forgo V. Association de zone which was picked by the French court de cassation. It regards the home of a Bavarian national who had settled in France getting a legal home there and a short time later went on intestate in France leaving moveable properties there. The French court implied the point of the movement of his intestate area to Bavarian Law. It was found that under the Bavarian law of movement to moveable property (intestate state) was managed by the law of the spot (lex situs). The French recognized this lessening to its law and associated the French inside law.

If we see Estate of fuld, decd (No 3) v. Hartley 1966 WLR 71 on its account the judge found that the expired domiciled in Germany and in like manner alluded the matter to German law whose conflict guideline suggested this to the law of nationality that is Ontario Canada. The will was before generous under the Ontario family or inside law however not under German municipality law. In any case, the judge for the transmission to the law of Ontario including its dispute rules. Fortunately, German law recognized

backward reference and henceforth German conflicts discounts gets the opportunity to be of commission finally, the judge purported against the will.

The real point of preference of the renvoi convention is that it advances uniformity of result and along these lines disheartens gathering shopping. The regulation gives adaptability while it promotes the essential enthusiasm of demonstrating concession to sister states. American judges ought to be urged to utilize the renvoi teaching in each choice of law case they listen. A court utilizing a present day way to deal with choice of-law, specifically, ought to consider the renvoi tenet a fundamental component of its examination to decide enough the hobbies of the concerned states. To disregard a sister state's way to deal with choice of law is conflicting to the very standards fundamental the modern approaches. A judge stood up to with sensitive choice of law issues probably can manage without remote words, for example, renvoi "However that issue is anything but difficult to determine. Basically take away its stress and renvoi turns out to be simply one more word retained into the dialect." A judge ought not be hesitant to utilize the teaching. Examination will uncover that renvoi is not as hard to understand as some case. A judge might really find that when he truly comprehends the ideas hidden the renvoi principle, cases displaying choice of law issues will be all the more effectively determined.

## 4.2 Scope of the doctrine

It is somewhat instructive to observe that the English doctrine of renvoi has hitherto been restricted in its practical application, to questions of formal and intrinsic validity of will, to issues of intestate successions to movables and (as often claimed) to questions of recognition of foreign divorce decrees. As indicated by Cheshire, in the innumerable cases managing such matter, as contracts, protection, offers of portable endowments bury vivo or mortis causae, contracts, debatable instruments, association, disintegration of remote Company et cetera, the English courts. Renvoi has been utilized in cases concerning the formal legitimacy of wills, when alluded to the law of an outside nation, have constantly connected the inside law of that nation as in Collier v. Rivaz. The tenet of renvoi has been utilized to true blue an adulterine kid, which would not have been conceivable under English law at the time. In the circle of family law, there is some power for the perspective that renvoi applies to formal legitimacy of marriage and it has, previously, been utilized in inquiries of ability to wed, albeit ensuing changes make this a point of reference of constrained quality. The doctrine of renvoi is not applied in the area of commercial law; a stipulation that a contract is to be governed by the law of Arcadia is normally taken as a reference to the internal law of Arcadia.[5]

The convention of renvoi is still fit as a fiddle in the domain of progression issues so that, when the English and Welsh decision of-law standards give that outside law ought to apply to the progression that additionally incorporates that remote state's decision of-law principles. The great sample is that of Re Annesley[6], where, as per the English a

nd Welsh test for house, an English woman kicked the bucket domiciled in France. The English decision of-law standards given to progression to her portable property to be administered by French law, as the law of the spot of her house. In any case, under French law, the progression to her portable property ought to be represented by the law of her nationality (i.e. English and Welsh law). The English court held that a French court would apply the doctrine or concept of renvoi and, all things considered, applies the

[5] Olorunfemi Eyitayo Temilolu, Oladapo Olayemi, Liman Ayodele Bilikis and Joseph Naomi Ojunugwa, The Significance Of Renvoi To Private International Law Particularly As Regards Partial And Total Renvoi (Tuesday, 27 January 2015)
[6] Davidson v Annesley [1926] Ch 692

English and Welsh decision of-law tenets, which accommodated French law to oversee the progression.

Additionally, in the family law courts, renvoi has been grasped notwithstanding when it prompts not exactly attractive results. In R v Brentwood Superintendent Registrar of Marriages[7], the English courts declined to perceive the legitimacy of the marriage between two single individuals in Switzerland, keeping in mind the end goal to guarantee that their choice was predictable with that of the Swiss courts. The strategy thought prompting the utilization of the tenet of renvoi in those circumstances is obviously to stay away from what is known as a 'limping marriage': one that is substantial in a few places and invalid in others.

Segment 212(2) Civil Partnership Act 2004 explicitly gives that, where an outside law is pertinent to decide the legitimacy of an abroad relationship, this incorporates state's PIL rules.

In any case, the use of the tenet is eccentric. A court might just apply it if one gathering explicitly argues its utilization, which adds to the cost and unpredictability of the case. And, after it’s all said and done, the court has the security net of open approach to conjure if the consequence of applying the teaching outrages English and Welsh ideas of equity or ethical quality. Renvoi in this manner might be seen as another optional apparatus accessible to English and Welsh law that empowers equity to be accomplished in the specific circumstances. This absence of assurance is one motivation behind why renvoi is not seen as suitable in business question. Further, the optional and adaptable nature of the precept is as opposed to the conventional idea that contention of-law standards ought not to be impacted by potential results.

[7] R v. Brentwood Superintendent Registrar of Marriages, ex parte Arias [1968] 2 QB 956

### 4.2.1 Validity of bequests

Where the imperative authenticity of a will or intestate movement to movables is definite by the law of an outside country, the perspective that would be taken of the matter by the remote judge, in the event that he were listening to the case, must be gotten a handle on. Besides, in cases in which the testator went ahead before 1964 and in cases in which, paying little mind to the way that he kicked the can after 1963, the formal credibility of his will is considered under the old standard law guideline of reference to the law of the house, a gift of probate won't be continued the ground from securing formal invalidity if the will is formally huge as exhibited by the private overall law, however not as indicated by inside of law, of the controlling honest to goodness structure.

### 4.2.2 Claims to foreign immovable's

Where a request rises of the benefit to outside immovable, as in Re Ross, the English court will apply the private all inclusive law principles of the country where the immovables are organized, if they would be associated by a court of the regions listening to the same request. This may be safeguarded on the ground that it progresses the security of title.

### 4.2.3 Some cases of movables

If the English choice of law principle implies a discussed title to movables to the law of their situs when the avowed title was said to have been obtained, is conceivable that the court will apply the internal game plan or arrangement of law that a court of the destinations would apply in the particular circumstances of the case.

### 4.2.4 Family law issues

The one zone of family law where there is clear power for the utilization of renvoi is that of the acknowledgment, at normal law, of legitimation by ensuing marriage?' There is additionally some power for the use of the regulation of renvoi to matrimonial property issues and to both formal and key's legitimacy of marriage," What is not completely clear is whether renvoi permits the legitimacy of a marriage to be maintained in the event that it is substantial either under the interior law of the nation to which English decision of law principles allude or under that nation's private universal law runs a standard of option reference.

So too in connection to children's, the Perez-Vera Report on the 1980 Hague Convention on the Civil Aspects of International Child Abduction demonstrates that the appropriate law as far as the Convention incorporates its principles of private universal law.

## 4.3 Inapplicability of Renvoi in many cases

This review of the principal decisions discloses the total renvoi principle is not of general application. Its degree seems, by all accounts, to be constrained to specific matters concerning either status or the demeanour of property on death. In incalculable cases managing such matters as torts, protection, offer of movables, endowments bury vivos or mortis causa, contracts, debatable instruments, associations, disintegration of Foreign organizations et cetera, the English courts, when alluded to "the law" of a remote nation, have never had the scarcest wavering in applying the inward law of that nation. One of the clearest dismissals of any renvoi tenet is to be found in the field of agreement, it being imagined that no rational specialist or his legal advisors would pick the use of renvoi. Not just was the dismissal clarified at normal law, yet this position has been affirmed by Article 15 of the (1980) Rome Convention on the law appropriate to contractual commitments to which impact is given by the Contracts (Applicable Law) Act 1990. The unmistakable terms of Article 15 are that the use of the law of any nation determined by this Convention implies the use of the standards of law in power in that nation other than its principles of private international law.

There are, nonetheless, as we have seen choices which do have any significant bearing renvoi in certain restricted territories. These cases maybe demonstrate that the judges, in considering whether the reference may not be to the private international law of the picked nation, have taken the perspective that "the different classes of cases merit singular thought in the light of expediency" and that the whole issue is not to be settled on from the earlier thinking. One essayist, who has done much to light up the subject, recommends that the renvoi teaching can't be dismisses in dairy animals, since it has ended up being a valuable and reasonable convenient for the arrangement of in any event certain unique questions. The conclusion, truth be told, is that for the most part a reference made by an English guideline for decision of law to an outside lawful framework is to the inward law, not to the private universal law, of the picked framework, yet this general standard is liable to various exemptions.

As respects uncalled for improvement, in Barros Mattos Junior v Mat-Daniels Ltd[8] counsel for the inquirer contended that the relevant law ought to be interpreted just like that law, including its guidelines of private international law. Lawrence COLLINS J, while judging the contention to be premature, nevertheless opined that, in spite of the fact that there is no power specifically in point, "the case to- the utilization of renvoi in compensation cases is frail".

As a rule, the precept of renvoi is not connected to issues including title to portable property. In Blue Sky One v Mahan Air[9] , the court contemplated that the principle was not suitable on the grounds that it included the English court leaning toward a remote state's decision of-law guidelines to its own, it was hard to apply, and it was unrealistic to prompt more prominent consistency of choices crosswise over wards.

The teaching of renvoi is likewise explicitly rejected in the decision of-law guidelines for contract and tort issues by the Rome I Regulation and Rome II Regulation. Given the dismissal of the teaching in property, contract and tort, doubtlessly the contentions against renvoi apply similarly to different territories of law and, accordingly, there ought to be no spot for the tenet in English and Welsh law?

Be that as it may, Mr Justice Eady, in Iran v Berend[10], conveniently compressed the English and Welsh position on the convention of renvoi by expressing that, in spite of the fact that renvoi was not part of the decision of law guidelines in property, 'the present day approach towards renvoi is that there is no general precept to be connected, however it will be seen as a helpful apparatus to be connected where fitting'.

[8] [2005] 1WLR 247.
[9] Blue Sky One Limited & o'rs v Mahan Air & Ano'r [2010] EWHC 631.
[10] [2007] EWHC 132 (QB)

# 5. Advantages and disadvantages of renvoi

Not surprisingly, the doctrine of *renvoi* has its advocates and opponents. Its advocates argue that, by resorting to foreign choice of law rules, the court avoids a foreign internal law that has no connection with the *propositus*.

Secondly, it is argued that it promotes the reasonable expectation of the parties. It might be argued that this was the case in *Re Annesley*[11] but it is difficult to imagine how the same could have been said of the result in *Re O'Keefe*. Thirdly, it is argued that *renvoi* produces a degree of uniformity of Conflict of Laws decision, in terms of the governing law at least, in cases where the English choice of law rules put a premium on this, that is, where the *lexsitus*is applied on the basis of effectiveness. In such cases, not to confirm the decision to that which a court of the *situs* would produce defeats the purpose of the original reference. Suppose the English court is faced with a case involving intestate succession and some of the immovable estate is situated in Italy. If the reference to Italian law, as the *lexsitus*, is confined to the domestic law of Italy, the result will be that the deceased's immovable will be distributed as would those of his Italian neighbours. [12]

Those who oppose the doctrine of *renvoi* argue that a study of the cases indicates that the English court concludes by subordinating its own choice of law rules to those of another country. Against this, however, it can be argued that this would not happen in those cases where the foreign rule offended some particular rule of public policy. Secondly, its opponents argue that the application of the doctrine requires that the courts receive detailed evidence of foreign law and that the judge is required to familiarise himself with

(a) The foreign internal law;

(b) The relevant foreign choice of law rules; and

(c) The policy, if any, of the foreign law towards the doctrine of single *renvoi*.

(d) The difficulty of the task is indicated by the terms of the judgment of Wynne Parry J in *Re The Duke of Wellington*[13], where the learned judge found he was being asked to

[11] Davidson v Annesley [1926] Ch 692

[12] Mampa Mphahlele, THE ADVANTAGES AND DISADVANTAGES OF RENVOI p.1 Http://www.academia.edu/4566983/THE_ADVANTAGES_AND_DISADVANTAGES_OF_RENVOI

[13] [1947] Ch 506

decide on the approach of Spanish law to *renvoi* without the benefit of any clear prior ruling from the Supreme Court of Spain.[14]

[14] Mampa Mphahlele, THE ADVANTAGES AND DISADVANTAGES OF RENVOI p.3
Http://www.academia.edu/4566983/THE_ADVANTAGES_AND_DISADVANTAGES_OF_RENVOI

## 5.1 Advantages and Importance of the doctrine:-

The accompanying contentions in backing of renvoi we can see the reason of the importance of this doctrine:

1) Use of renvoi achieves uniformity in decisions; if not applied, determination of person's rights depends on where action brought; result is conflicting decisions, poor justice; if local courts decide in same way as foreign court by using PIL result is uniformity[15]

2) Through utilization of renvoi honest to goodness desire of individual may be accomplished

3) The need of translating the foreign law with the end goal of including the clashing standards as well. The reduction to remote law is thought to be an abatement to the entire arrangement of law, including to its clashing standard.

4) The foreign law must be connected when it self-announces able. Renvoi requests to be conceded; else, it will imply that the outside law will be connected to a range where it proclaims itself inadequate.

5) The renvoi guarantees the implementation of judgments. The judgment will be productive just as an impact of conceding the renvoi, on the grounds that, from every one of the states where it is conceivable to conjure its belongings, in all probability is the state whose law is associated with the legitimate relationship, through its outside component.

6) Second degree renvoi can be a method for coordination of law framework in the vicinity, if one of those law frameworks does not acknowledge the renvoi. The inconceivable possibility to decide the skillful law if there should arise an occurrence of second degree renvoi can be maintained a strategic distance from by applying the material law showed by the clashing standard of the legal discussion, or by the material law of the legal gathering; considering that the second degree renvoi can give the synchronization of the arrangements gave by the laws in vicinity.

[15] basilnet.awardspace.com

## 5.2 Disadvantages of the doctrine

The reasons for considering this doctrine as a disadvantage are:-

1) Application of household law of outside nation could crush sensible desires of individual, constitute invalidation of arrangement basic En PIL principle; i.e. decide that interstate progression to movables represented by law of residence taking into account see that utilization of law of individual's home best fits sensible desire of people; if court applies renvoi, which for the most part substitutes nationality as associating variable, desires of individual who did not make will b/c he trusted his property would regressed by principles overseeing interstate progression might be crushed

2) Total renvoi difficult to apply; requires that local court ascertain as facts the precise decision that foreign court would render; local court must obtain prevailing view in foreign country on doctrine of single renvoi; it may be difficult to prove especially where the point may not yet be litigated; difficult to acquire info from reliable experts
*Wynn-Parry* J in *Re Duke of Wellington*: "it would be difficult to imagine harder task than which faces me, namely, expounding for first time either to this country or Spain relevant law of Spain as expounded by SC of Spain, which up to date, has made no pronouncement on subject... and on subject their exists profound cleavage of legal opinion in Spain and two conflicting decisions of courts of inferior jurisdiction"[16]
3)Another trouble emerging where remote law alludes to "nationality; simple for unitary states, yet tricky for government states

Re O'Keefe: accepted national implied law of house of cause; lady, British national, kicked the bucket intestate in Italy leaving moveable property; En PIL expressed law representing progression was Italian, since she was domiciled in Italy at death; as indicated by Italian law, administered by national law; it rejected renvoi; Crossman J: law of lady's nationality comprehended to mean a portion of British Empire to which she had a place; Southern Ireland; her nationality was Southern Ireland

[16] basilnet.awardspace.com

4) The proper clashing standard is that of the legal discussion. In private universal law there is a rule as indicated by which the clashing standard of the legal gathering is connected and not the one of the remote law framework, and if the renvoi is acknowledged, it would imply that this rule is no more embraced, as the capable court for settling the case would control itself by the outside clashing standard to decide the fitting law.

5) The renvoi may lead to a continuously loop of new cases of renvoi (an inextricable circle). If the first remission imposed by the conflicting norm of the judicial forum is considered as referring to the whole foreign law system, then the renvoi must also be referred to the whole law system of the judicial forum, including its conflicting norms. In this case, the declared unqualified conflicting norm disposes a new renvoi to the foreign law which in turn returns again to the law of the judicial forum and so on. If the renvoi is acknowledged it means an arbitrarily exit of this inextricable circle.[17]

6) The confirmation of the renvoi creates instability with respect to the legitimate arrangement. The renvoi cannot be acknowledged in light of the fact that it expands the vulnerability in private universal law and constitutes an exemption to the typical instances of use of the remote law. For these specified reasons a few bargains and international traditions no more permit the renvoi.

[17] Berlingher Remus Daniel, "The Renvoi in Private International Law," International Journal of Social Science and Humanity vol. 3, no. 1, pp. 66-69, (2013)

# 6. Types of renvoi

There are different types of renvoi followed by different nations-

- Total or double Renvoi or foreign court doctrine: some countries such as England and France currently accept renvoi twice
- Partial or single, imperfect, receptive or continental renvoi: Countries such as Spain, Italy, and Luxembourg operate a "Single Renvoi" system
- No renvoi: Countries such as Denmark, Greece and the US do not accept renvoi.

## 6.1 Single Renvoi

First degree renvoi or single renvoi is that form when the foreign law refers to the forum law, and if the renvoi is accepted, the approached court shall apply its own domestic law. Theoretically, the discussion of renvoi was determined by the Forgo case[18] that consisted of the following elements: a Bavarian illegitimate child, named Forgo, was brought to France from the age of 5 years, and lived most of his life in France, without ever acquiring an official domicile, because he never met the French law conditions. Therefore, according to the French law, he remained a Bavarian citizen legally residing in Bavaria. After his death, multiple important movable properties remained, and his collateral relatives introduced to the French court "a petition of inheritance". According to the French law, the movable succession was under the national law of the deceased (in the Bavarian national law), that stated the inheritance on maternal lineage for the collateral relatives. However, the French courts had established that the Bavarian conflicting norm regarding the movable succession sent back to the French law, because, according to the Bavarian conflicting norm, the movable succession is subject to the law of the deceased's real domicile. Consequently, the Bavarian conflicting norm does not accept the sending, but sends back to the French law system. Accepting the renvoi, the

[18] B. Ancel and Y. Lequette, Grands arrêts de la jurisprudence francais de droit privé, 2nd ed., Paris Sirey, 1992, pp. 53-60, (1878)

French court applied the French succession lay, according to which maternal side relatives were not allowed to inherit. Thereby, Forgo's succession became vacant and the movable property located on French territory became part of the French State.[19]

Nations, for example, Spain, Italy, and Luxembourg work a "Solitary Renvoi" framework. This framework alludes to another ward's decision of law guidelines. Where the matter emerges in a ward, for example, Spain, Italy or Luxembourg (A), those purviews will consider whether their own residential law is the material law or if the relevant law is that of another locale (B). Where B's standards may give back the issue to A, (the first gathering court), the court will acknowledge the primary abatement and apply its own residential laws.

For instance, where a testator, who was a French national, was continually inhabitant in England yet domiciled in Spain, bites the dust leaving moveable property in Spain, the court might need to consider which authoritative gathering will apply to manage the property under progression laws.

For this situation, Spain being the law of the discussion, i.e. where the property is arrange, applies the law of the perished's nationality, in particular France and applies French law. French law watches the law of the expired's ongoing living arrangement which is England. Britain however looks at the house of the perished, which is Spain.

As two exchanges occurred, (from Spain to France and from France to England), Spain, working the Single Renvoi framework, won't acknowledge it back. In like manner, the Spanish court being the law of the gathering, will apply the law where it was last left in the chain of referral i.e. with the law of England and Wales.

Where both nations work with either no renvoi framework or single renvoi frameworks, there is a potential issue.

The tenet of partial renvoi includes a reference to the contentions guidelines of the picked framework, which brings about either transmission to another legitimate framework or

[19] Berlingher Remus Daniel, "The Renvoi in Private International Law," International Journal of Social Science and Humanity vol. 3, no. 1, pp. 66-69, 2013

abatement to the discussion's law. So that, on the off chance that we allude to the case concerning Arcadia, then the significance of the law of Arcadia is the law of Arcadia, including its contention controls however less its contention rules applying renvoi, if such exist. In this way, in connection to the instance of the intestate biting the dust domiciled in Arcadia, if the significant Arcadian clashes guideline alluded to English law as the law of the nationality, then, if the English court "acknowledges" the abatement and chooses the case as per English law, this would be a case of single or halfway renvoi. Along these lines in Casdagli V. Casdagli[20], held that "we are prepared to apply the law of nationality closer to transmit the, matter to us, we would apply the same law as would be connected to our subject. Single renvoi has however being explicitly denied by English court in Re Askew (1930) 2ch 259. The operation of single renvoi can include the reference of the issue to a third framework (that is, transmission). This was the situation in the first case of the Italian domiciled French national where Italian struggle law would allude to the lex patriae French law.

[20] [1918-19] All ER Rep 462

## 6.2 Double renvoi

Second degree renvoi or complex renvoi[21] is that form in which the foreign law returns to a third state law and not to the law of the judicial forum. For instance, a Danish citizen (whose personal law is the law of the domicile) would reside and die in England and a French court would be informed about a dispute concerning his movable succession; the French law will refer to the national law of the deceased (the Danish law), that, in turn, refers to the domicile law (the English law), which accepts the renvoi. Finally, the English succession judicial system as the law of the deceased domicile will govern his movable succession.[22]

Not at all like Spain, a few nations, for example, England and France as of now acknowledge renvoi twice. However in this framework there can never be more than two reductions.

In this situation the gathering court considers that it is sitting as the remote court and would choose the matter as the outside court would. It includes not simply record of the contention standards of the lex causae additionally its renvoi principle. In no time just English court's uses this methodology. Therefore in the above situation complete renvoi would do the accompanying:

A) The English court would decide the lex causae. Consequently in the above case the English court would allude his conjugal limit Italian law his lex domicili

B) The English court then applies court then applies the contention guidelines of the lex causae. In the event that the above situation, it would find that an Italian court could allude back to English law as lex patriae

C) As English law of contention likewise alludes to Italian law, to abstain from toing and froing the English court would look to Italian law to see whether they would

[21] D. Lupascu and D. Ungureanu, op. Cit., see reference, no. 2, pp. 79
[22] Berlingher Remus Daniel, The Renvoi in Private International Law vol. 3, no. 1, International Journal of Social Science and Humanity, pp. 66-69, 2013

acknowledge renvoi. On the off chance that they would, the English court would acknowledge English residential law.

It was initially perceived in English court by Russle J in Re Annesly, (1926)1CH 692. An English lady left a will as indicated by English law but at the time of her death she was domiciled in France however as indicated by French law, she had not gained a French house (as intention to permanently settle) as a result of inability to consent to registered customs. The testamentary dispositions were substantial in English law however invalid by French law since she had neglected to leave 2/3 of her property to her kids. It was that French law would apply in light of the fact that

a) The residence of the perished would be controlled by English law, the expired was domiciled in France

b) But French law would allude to the UK patriae

c) The standards of English private international law would allude to French law.

d) The French lawful framework acknowledges the tenet of single revoi in this manner the French judge would have acknowledged the abatement. in this way the English court ought to choose as the French court would.

Another case is the situation of Re Ross[23] Lukmore J. where an English lady at the time of her death was residing in Italy leaving the will of moveable property influenced by English law and Italy unfaltering property in Italy. By English law progression is administered by Italian law as lex domicilii the will was somewhat invalid by Italian law. The Italian decision of law under being established on nationality would have alluded to English law. Luxmore J, reasoned that the Italian court would dismiss renvoi and basically apply English law.

In Nelson v. Over ocean ventures enterprise of Victoria ltd. The high court of Australia had conceivable arrangement (single, dismissing the renvoi and twofold renvoi) he greater part embraced the twofold renvoi approach without conferring itself to do same in comparable cases. In Collier v. Rivaz: A man named Ryan, a British national passed on

[23] (1930) 1 CH 376

domiciled in Belgium. He cleared out certain testamentary papers executed as per the prerequisite of Belgian nearby law. The court of England chose to choose the matter as though it were sited in Belgium. The judge sir I.T Jenner, on confirmation that by Belgium law if we see the legitimacy of will made by outsiders not lawfully house in Belgium was administered by the law of their own nation. He expressed that "the court staying here to decide it must see itself as sitting in Belgium under the specific situation of this case.

## 6.3 No Renvoi

Countries such as Denmark, Greece and the US do not accept renvoi.

## 6.4 Difference between single renvoi and double renvoi

- Morris: differ in starting point b/c **single renvoi** does not require courts to inquire how foreign court would decide matter, nor consider possibility that foreign court might **accept renvoi**; differ in result b/c if foreign law refers to law of forum, that law invariably applied under **single renvoi** but not invariably applied under **double renvoi** (depends if foreign country accepts renvoi)
- **Single renvoi** country does not take into account foreign country's **renvoi** rule; not influenced by considerations if foreign court would have accepted renvoi, applied its own domestic law

**Double renvoi requires proving foreign law, but also foreign renvoi rules**

# 7. Different approaches to choice of law/ renvoi

Here the researcher needs to call attention to that, it can be obviously seen that the present day or realist approach and the customary methodology, are very comparable, each depends fundamentally on principles of extension and has, best case scenario a simple clashes guideline. The arrangements progressed by the strategy situated methodologies are basically the same as those offered by the traditionalists, and they experience the ill effects of the same imperfections and subsequently the tenet has not possessed the capacity to get a convincing shape and structure.

## 7.1 Traditional approach

The traditional approach to choice of law sought to achieve uniformity and predictability of results regardless of the forum of the lawsuit." This approach consists of a series of rules that point to a geographical location where rights and obligations vest. That location then is used as the source of the applicable law.[24] Subsequently, by and large, in contracts cases, the law of the spot of making administers respective contracts and the spot of execution oversees one-sided contracts (lex loci contractus); in torts cases, the law of the spot of the wrong (lex loci delict) represents; and in property addresses, the law of the situs (lex reisitae) administers. Applying this approach, a court first describes the issue before it (for instance, one of agreement), finds the suitable decision of-law principle (spot of making), and afterward applies the guideline to the truths (New York law oversees an agreement made in New York).

The Restatement, which follows this territorially oriented approach, has been applauded by some scholars for promoting ease of application, certainty, predictability, and uniformity of result.[25] Different commentator, in any case, have scrutinized the customary tenets as limited and inflexible, and regularly prompting uncalled for results. Despite the fact that the conventional way to deal with decision of-law seems mechanical

[24] JOSEPH H. BEALE, A TREATISE ON THE CONFLICT OF LAWS, NEW YORK BAKER, VOORHIS & CO., Vol 1 (1935)
[25] Goodrich, Public Poli9 in the Law of Confitr, 36 W. VA. L.Q. 156 (1930).

and simple to apply, in all actuality, courts have utilized various "getaway gadgets" or “escape device” to abstain from applying outside law they find disgusting. Hence, when a decision of-law guideline indicated a court the law of another ward, the court would figure out how to apply its own law to the circumstance. These gadgets or devices, for example, renvoi, portrayal, open arrangement, and correctional law or expense claim special cases, empowered a court to maintain a strategic distance from brutal results. The beliefs looked to be accomplished - simplicity of use, consistency, consistency, and aversion of discussion shopping were defeated, along these lines, in view of the gathering's push to achieve equity in individual cases and its natural inclination toward its own substantive laws.

## 7.2 Modern approach

Dissatisfaction with the traditional approach to choice of law led scholars and judges to develop what is sometimes referred to as a "functional" approach to choice of law. Under this approach, courts do not apply rigid rules but instead look at various factors that point to the application of a certain jurisdiction's laws. Not only do courts take into account the site of the event, but they also consider the place where the parties reside and the policies of the concerned states.[26] Although this approach theoretically may afford less certainty and predictability of results, it gives the place having the greatest interest in the dispute control over the legal issues.[27] Thus, by sacrificing the purported virtues of the traditional rules, courts have gained flexibility and perhaps greater justice.

The discussion concerning the renvoi has subsided in later past, as researchers appear to have buckling down on the cases identified with the precept of renvoi. In such manner, the Modern arrangement legal scholars or realists are of the feeling that in decision of law remote decision of principles can be disregarded as the administrative ward ought to be distributed taking into account the approaches which primarily underlie the substantive laws at issue, and general use of law guidelines were not created in light of these strategies. Concerning approach the specialists have said that the basic knowledge of present day hypothesis is that the pertinence of a law is an immaculate inquiry of understanding. As most enactment does not indicate its regional degree, it clues at filling the crevices by reference to a law's motivation. Be that as it may, states are allowed to embrace any distinctive way to deal with understanding in the event that they regard it fitting and altogether agreement.

[26] RHODA S. BARISH, RENVOI AND THE MODERN APPROACHES TO CHOICE OF LAW, THE AMERICAN UNIVERSITY LAW REVIEW [Vol. 30:1049] See, e.g. Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963) (law of place having the most interest in the problem should have paramount control); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954) (law of place with the most significant relationship to the matters in dispute, rather than law of place of the tort or place of the making of the contract, should be applied).

[27] See, e.g. Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963) (law of place having the most interest in the problem should have paramount control); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954) (law of place with the most significant relationship to the matters in dispute, rather than law of place of the tort or place of the making of the contract, should be applied).

# 8. International judicial responses and the major dilemmas pertaining to the doctrine

In order to analyze the judicial and thus legal position of the doctrine of renvoi in international context, it is important to first see the Application of the doctrine, the doctrine has been applied to:

- Formal and intrinsic validity of wills
- Cases of intestate succession
- Legitimation by subsequent marriage.

However, there are indications by the courts and the jurists that it might apply to:

- formal validity of marriage
- Capacity to marry.[28]

## 8.1 The Major Dilemmas and Judicial responses:

The main difficulties in the application of the doctrine as highlighted by the judicial responses and various conventions curtailing its scope are as follows:

The Convention on the law material to contractual commitments in a way has reduced the extent of tenet of renvoi for the European landmass at any rate as this tradition is an European Community Convention. The Article 15 of the tradition obviously avoids the operation of the renvoi by expressing that "the application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law".[29]

[28] P.R.H.Webb and D.J.L.Brown,(London: Butterworth Publications,1960) at pp.64-65
[29] Refer European Community Convention Article 15

There were some problems highlighted due to use of renvoi. These problems are listed by different experts[30]

### 8.1.1 Unpredictability of outcome

### 8.1.2 Inextricable circle:

8.1.1 Unpredictability of outcome:

Experts like Dicey and Morris have highlighted a major trouble in the use of the renvoi, as per them the significant trouble is the flightiness of result as likewise highlighted on account of Re Duke of Wellington[31] where Wynn-Parry J. additionally remarked that the regulation makes everything dependant on the confirmation of remote specialists. It requires evidence of outside decision of law guidelines, as well as of remote standards about renvoi. Likewise, such flightiness is because of the reason that in the mainland countries chose instances of the court of first example are not considered as powers and are not tying as powers to be taken after and the precept tends to change as per times.

8.1.2 Inextricable circle

Likewise, there might be an inseparable circle. The impact of applying the precept of renvoi is to settle on the choice turn on whether the remote court rejects the renvoi regulation or receives a hypothesis of single or halfway renvoi. Be that as it may, if the remote court likewise embraces the teaching of aggregate renvoi, then coherently no arrangement is conceivable unless either, on account of English court for case, the English or the outside court deserts its hypothesis, for generally an unending circulus inextricable is constituted. As Dicey and Morris comment, 'It is not really a contention for the teaching of aggregate renvoi that it is workable just if the other nation rejects it'. This was additionally implied on account of Re Askew[32]

[30] Dicey and Morris, Dicey and Morris on Conflict of Laws (London: Sweet and Maxwell publications ,2000) at pp.78
[31] [1947] Ch 506, 515
[32] [1930] 2 Ch. 259

American Professor Lorenzen[33] has sketched the problem of renvoi from US perspective in the following language:

The renvoi doctrine is, therefore, no part of the Conflict of Laws of the United States. Its introduction in to our law would be most unfortunate on account of the uncertainty and confusion to which it would give rise in the administration of justice and its demoralizing effect upon the future development of the Conflict of Law to complete the current British picture, reference should be made to the articles of Dean Falconbridge and his conclusion that the renvoi is "intrinsically illogical, and unsatisfactory in its results.

[33] Renvoi Theory and the Application of Foreign Law: Renvoi in Particular Classes of Cases Ernest G. Lorenzen (Yale Law School)

## 8.2 Case laws

**8.2.1** In the well known instance of **Collier v. Rivaz**[34], one individual named Ryan, a British subject, died domiciled in Belgium. He cleared out certain testamentary papers executed in understanding with the customs required by English law, however not as per those required by Belgian neighbourhood law. It was demonstrated by the fundamental master confirmation that the Belgian courts if approached to choose the subject of legitimacy would maintain the testamentary documents, on the ground that they were substantial as indicated by the testator's national law. Sir Herbert Jenner in his judgment watched that the entire premise of choice is that the court sitting England to decide the inquiry must see itself as sitting in Belgium, that is, the court is just worried to see what see the Belgian court would take of the English law, and it was never recommended that it was the obligation of the English court to consider what its own perspective of the English law should be. It is presented that, the outcome in

Collier v. Rivaz couldn't have been touched base at if the English court had declined to consider the tenets of private universal law applied by and perceived in the Belgian courts, and had only connected the ordinary local law of Belgium material to Belgian nationals.

**8.2.2** Collier v. Rivaz was not followed in **Bremer v. Freeman**[35], where, a British subject kicked the bucket domiciled true in France. She had made a will in France in English form; the will managed movables, but didn't include the movables which were in England. The testatrix had not got from the French government an approval to get a French habitation. Sir John Dodson conceded the will to probate on the ground that, however the testatrix had her home \de facto in France, yet that it was important keeping in mind the end goal to set up a habitation in France, for example, would influence her progression and the method of making her will that her residence ought to be by approval of the French government. The judge, Sir John Dodson, explicitly said he was taking after Collier v. Rivaz.

[34] (1841) 2 Curt. Ecc. 855
[35] (1857) 10 Moo. P C.C. 306

The choice was turned around in the Privy Council. The judgment was conveyed by Lord Wens leydale where he watched that" On the entire, then, on a survey of this proof of the law of France, their Lordships are unmistakably of sentiment, that it is not set up, that with the end goal of having a house which would direct the progression, any approval of the Emperor was vital; that a lawful habitation for this reason for existing was obviously demonstrated, and that thusly, if the testatrix had an energy to make a will by any means, the will in this structure was invalid". Therefore Privy Council declined to probate the will of British subject who passed on domiciled in France in English sense and in England in the French sense on the ground that it was made in English yet not in French structure. The thinking of court is in this way questionable as it exhibits a case for furthermore in the meantime against the regulation.

**8.2.3** Next in line is the situation of **Re Johnson**[36], where the convention was connected for a situation of incomplete intestacy, is the primary case in which "renvoi" seems to have been used. The certainties are in the blink of an eye as follows. In 1894 a British subject one Mary Elizabeth Johnson whose house of beginning was Maltese, kicked the bucket intestate and domiciled in Baden. She was not naturalized there, and the evidence for the situation built up that by the law of Baden the progression to her property was administered by the law of her nationality. She exited versatile property in England and Baden. Farwell, J., guided the movables in England to be disseminated by law. The choice depended on two option grounds: First, that it is inconceivable as per English law for a man to procure a domicile of decision in an outside nation unless that individual has likewise obtained a domicile there as indicated by the law of the remote nation; in this way, in the specific case, as the law of Baden declined to perceive house as having any legal impact on the status of Mary Elizabeth Johnson, the progression to her portable property must be resolved by law of her home of starting point; that is, Maltese law. This perspective of the English law as to home is not consistent with other decisions. The second gathering of the choice depends on the presumption that Mary Elizabeth Johnson was at her passing domiciled in Baden, and that the law of Baden governed the progression to her versatile property. It was found by the authentication which was tying

[36] [1903] 1 Ch. 821

on the gatherings for the situation that, as indicated by the law of Baden, the legal succession to that some portion of her property which she had not discarded by her will was represented by the law of the nation of which she was a subject at the season of her death.

Thus, this decision was considered to be inconsistent with the well settled rule under English law which says that for the purpose of an English conflict rule domicile means domicile in the English sense. Also, in the case of Re. Annesley[37], Russel, J. introduced the concept of Total or Double renvoi for first time and applied the French domestic law as the law of the domicile on the ground that a French court would have applied the same logic by the way of renvoi from English law.[38]

[37] (1926) Ch. 692

[38] Renvoi Revisited by Billah masum, pp. 5
Http://www.academia.edu/1734787/Renvoi_Revisited

# 9. Renvoi a dying ideology and Issues relating to renvoi

## 9.1 Renvoi a dying ideology

Renvoi has been burned at the stake many times by the very ablest writers in the field of private international law. Yet, Phoenix- like it always arises from the ashes of its own holocaust. The continued existence of the doctrine should make one suspect that renvoi fills a vital practical need in the field of the conflict of laws.[39] Truth to be told it accommodates two opposing standards of choice. The one is the contention of laws guideline which coordinates the court under certain general circumstances to apply outside law. The other is the natural conviction of the judge that in the exceptional circumstances of the renvoi case before him the finishes of equity will be served pretty much also, if worse, by the use of the well known law of the discussion as opposed to the new law of a remote locale. Whether real or not, renvoi is a gadget which allows both of these conflicting should be fulfilled.

We host noticed that all gatherings appear to concur that renvoi includes an endless loop or interminable chain of references, by far most condemning it on account of this imperfection (among others), the rest tolerating it regardless of the trouble. The undertaking has gone into the field of witticism, with the distinctions, as may be assumed, supporting the operation opponents of the theory. As has as of now been said, the researcher battles that the common teaching of renvoi does not include an endless loop, nor without a doubt any intelligent trouble whatever.

A standout amongst the most constant issues in the historical backdrop of rationale is the issue of round definitions. Not every roundabout definition are vicious, obviously, in light of the fact that violence includes a quality judgment, and such judgment must allude at last to the reason for which the circle was initially depicted. In a shut deductive framework, for instance, it might be sensibly important that the components of the framework be characterized regarding each other. Obviously, be that as it may, since it is

[39] The American Law Institute accepts the doctrine of renvoi as governing questions of title to land and those concerning the validity of divorce. RESTATEMENT, CONFLICT OF LAWS (1934) § 8

the reason for a decision of laws tenet to assign to the judge which law to use in choosing a case, a circle which overcomes decision on sound grounds is vicious.

Vicious circles which include straightforward roundabout definitions are anything but difficult to identify and offer ascent to little trouble. In any case, if the circle is covered, one frequently thinks that it's difficult to find what sink is free the coherent problem. Give us a chance to think about for a minute a couple of well known samples of these brain twisters before we try to make a generalised statement of the present case of the doctrine of renvoi.

The following paradox[40] was a favorite with Bishop Taylor who used it to point the moral vanitas vanitatum: A man who had been long accustomed to put implicit faith in his dreams, one night dreamt that all dreams are vain. This was most distressing; for if all dreams are vain (thought the dreamer), then my present dream is likewise vain. Therefore it may not be believed. Therefore faith in dreams is re- stored. Therefore my present dream is trustworthy. Therefore dreams are vain...

Take another surely understood case. Epimenides once had event to comment "All Cretans are liars." No one was aggravated until a chance associate happened to recollect that Epimenides was himself a Cretan. Presently, if all Cretans are liars and if Epimenides is a Cretan, then, per syllogism, Epimenides is a liar. Along these lines Cretans are straightforward. So is Epimenides. He should be accepted when he says that Cretans are liars. Also, as he himself is a Cretan.

Give us a chance to consider yet another. As of late, there was a proposition (I have been told) for the development of a gigantic geographical guide of the United States to be made precisely proportional and to be raised on the site of a whole province (say Pecos in the State of Texas). Streams, mountains and fields were to be precisely spoken to. Each state, area, town and town was to have its place. Obviously, Pecos region would be spoken to. It would take the type of a greatly lessened topographic guide of the United States subsequent to there would be no some portion of Pecos region which would not be guide. A standout amongst the most fascinating elements of this smaller than usual guide

[40] SMITH, HOW THE MIND falls INTO ERROR 12 (1923).

of the United States would be a practically tiny proliferation of Pecos area, Texas, which upon moment examination would end up being an imperceptibly little, yet finish, topographic guide of the United States.

At long last, there is our own particular issue which is much the same as the others: An American clashes standard which alludes to a French clashes principle which alludes to an American clashes guideline which alludes to a French clashes guideline.

The above are illustrations of Paradox emerging from self-referring recommendations, or self-including classes. In every case the class or the suggestion contains itself as a feature of itself. The present dream incorporates itself by alluding to all fantasies which incorporate the present dream. The Cretan liar incorporates himself when he says all Cretans are liars. Pecos area incorporates itself by including the United States. The American clashes guideline incorporates itself by including the French standard which incorporates the American principle.

Not the majority of the above Paradox is of the same sort, nor are they to be determined in the same way. In any case, in managing them, scholars wind up coming back to a sort of model which is easy to state but then which has every one of the troubles one could crave. It is the exposed articulation: This suggestion is false. On the off chance that one denies it, the outcome is: this suggestion is false will be false. Thus, it appears, this recommendation is valid. Deny it again by saying this suggestion is false, will be false, will be false, and the outcome gives off an impression of being: this recommendation is false. Proceed by denying it thrice: it's valid. Presently four times: it's false. Et cetera, in saecda saeculorum.

The academic determination of this mystery is joined in the saying standards propositionis non potest supponere expert toto. This is not an answer of the issue, obviously, but rather is just another method for expressing it. The scholastics don't show why a part of a recommendation can-not be placed for the entirety. They only show that one who does as such welcomes coherent calamity.

Round proclamations, whether horrendous or something else, have since quite a while ago got the nearby consideration of scholars and mathematicians; and the history of

rationale is scattered with the debris of frameworks intended to stay away from the challenges these announcements cause. What to do with propositions of this sort regularly called self-alluding or exceptive suggestions is still a fervently subject in contemporary rationale. It would be strange for us to endeavor to look at the benefits of that controversy. In any case, pending the last result, we are impeccably justified in excepting as illegitimate every roundabout definition. That is to say, we might take it as a propose of legitimate science that round definitions are illegitimate, and demand that all who longing to go behind this fundamental supposition keep their exercises to another field of scholarly teach, to mind, rationale. As Kelsen proposes for legitimate science, the presence of the state, declining to permit anybody in law to challenge the legitimacy of this lawful certainty, so might we hypothesize for private international law a disallowance against roundabout definitions in deciding decision of law.

In their well known treatise on numerical rationale, Whitehead and Russell were confronted with the need of taking care of the issues raised without anyone else's input alluding recommendations. Out of the trouble was to hypothesize as invalid those recommendations which included horrendous circles, and those classes which were made out of illegitimate totalities, i.e., self-including classes. "The rule," they said, "which empowers us to dodge illegitimate totalities might be expressed as takes after:

"'Whatever involves all of a collection must not be one of the collection'; or, conversely: 'If, provided a certain collection had a total, it would have members only definable in terms of that total, then the said collection will not have a total.' We shall call this the 'vicious-circle principle,' because it enables us to avoid the vicious circles involved in the assumption of illegitimate totalities. The imaginary sceptic, who asserts that he knows nothing, and is refuted by being asked if he knows that he knows nothing, has- asserted nonsense, and has been fallaciously refuted by an argument which involves a vicious-circle fallacy. In order that the sceptic's assertion may become significant, it is necessary to place some limitation upon the things of which he is asserting his ignorance, because the things of which it is possible to be ignorant form an illegitimate totality. But as soon as a suitable limitation has been placed by him upon the collection of propositions of

which he is asserting his ignorance, the proposition that he is ignorant of every member of this collection must not itself be one of the collections."[41]

The same principle with respect to class inclusion is elsewhere stated by Russell as follows:

> "Classes are logical fictions, and a statement which appears to be about a class will only be significant if it is capable of translation into a form in which no mention is made of the class. This places a limitation upon the ways in which what are nominally, though not really, names for classes can occur significantly: a sentence or set of symbols in which such pseudo names occur in wrong ways is not false, but strictly devoid of meaning. The sup- position that a class is, or that it is not, a member of itself, is meaningless in just that way."[42]

For some odd reason, Whitehead and Russell see their investigation as an answer of the trouble. They propose their inconvenience away. In any case, it ought to be borne personality a top priority that the technique for proposition does not explain anything. It is a reluctant impediment of one's circle of action. Truth be told the arrangement progressed by Whitehead and Russell is strikingly like the educational adage standards propositionis non potest supponere professional toto expressed as a hypothesize. In any case, it is completely authentic for attorneys to propose where it would be illegitimate for a philosopher to do likewise. Our motivation is to stay away from disagreement, not as a matter of course to determine it, the determination of summed up types of inconsistency being the matter of rationale and not of law. There is one type of roundabout articulation which the mathematician or scholar would not as a matter of course view as awful, but rather which for the legal counselor would be entirely illegitimate. That is an interminable relapse of definitions. Mathematicians and scholars are totally at home with in-limited exhibits, just some of which they see as illegitimate. Legal counselors, despite what might be expected, create rules, not with the end goal of producing vast

[41] Alfred North Whitehead, Bertrand Russell Principia Mathematica, Cambridge University Press p 37-38 (1919).
[42] RUSSELL, INTRODUCTION TO MATHEMATICAL PHILOSOPHY (1911) 137.

arrangement, but rather keeping in mind the end goal to settle cases. Henceforth, what may be a superbly sufficient arrangement of the renvoi precept for a philosopher would help the attorney not under any condition? For instance, a philosopher may offer the accompanying as an answer of the issue of renvoi, his sole point being to dodge self-alluding recommendations.

1. An American principle of contention of laws of the main request coordinates the demeanour of the case as per the procurements of outside law.

2. On the off chance that the situation being what it is getting in (1) outside law would have coordinated the air of a comparable case as indicated by the provisions of American law, then an American tenet of contention of laws of the second request coordinates the demeanour' of the case as per the procurements of local law.

3. Considering the present situation acquiring in (2), an American principle of the contention of laws of the third request coordinates aura as indicated by remote law.

4. In light of the current situation getting in (3), an American tenet of the contention of laws of the fourth request coordinates mien as indicated by residential law. Et cetera.

At the end of the day, for the reasons of rationale, we could accept that our law furnishes us with a vastness of standards of contention of decision of law, to mind: a guideline of contention, a principle of contention of contention, a tenet of contention of contention of contention, and so on. No guideline would contain whatever other since every tenet would be coordinated to an alternate subject and every standard would be of an alternate sensible request. The answer for rationale would only be to show the limitlessly extending nature of the arrangement accordingly created. Clearly, such an outcome would be generally as horrendous for legal advisors as if it contained a genuine sensible paradox. At the end of the day, limitless relapse of definition is not any more accommodating to us than a genuine vicious circle.

## 9.2 Issues relating to the doctrine

There are some other views which are in perfect accord with those views which are expressed by the writer in different articles, these views explains the reasons why renvoi is not followed in nations and what are the challenges it has to face.

Some of the scholars view is summed up on the choice in the accompanying words: "by virtue of its irregularity with basic law hypotheses of the contention of laws, its key unsoundness and the disorder which would come about because of its application to the contentions emerging between the laws of the conditions of this nation, it is my assessment that the "renvoi" has no spot in our law.

(1) The renvoi convention is not upheld by reason. Sensibly connected it prompts an uncertain swaying between the laws of the two nations included. E.g. On the off chance that the New York guideline of the contention of laws, the lex domicilii, alludes to the French law including its contention of laws, the lex patriae must be comprehended as alluding to the New York law in its totality, including its principles of the contention of laws. The outcome is, along these lines, an unending reference forward and backward,- the use of garden tennis in the contention of laws, which constitutes a down to earth if not coherent absurdity.

(2) Another reason is that a court cannot become or play the role of other court in the same way as it would have played by the original court. For example, The idea that the New York court ought to constitute itself a French court, upon the hypothesis that it is accused of the organization of French law in the same way as the French court, is wrong. The New York courts exist with the end goal of implementing New York law, including the New York guidelines of the contention of laws. These guidelines can't be changed by French law.

(3) The hypothesis, created finally by Westlake, has little to support its and the outcome would be in level disagreement with section 47 of the New York Decedents' Estate Law.'

(4) To state precisely the issue as to renvoi would appear to be verging on adequate to disprove the tenet. The inquiry is: When a law-provider guides the courts to apply outside

law does he request that the remote framework choose what law is pertinent or does he look for in the framework the immediate arrangement of the lawful inquiry? The development of a will as indicated by New York law is-controlled by the law of the testator's house. For a court to hold that the lawmaking body implied that the French struggle of laws guideline ought to apply and New York inward law would be to annul the procurements of the statute and to correct it by substituting consequently the French standard, in particular, what the law of nationality is to oversee.

(5) The dispute that the acknowledgment of the renvoi teaching would settle on for consistency of choice in the distinctive nations in which the inquiry may be displayed for arbitration has been appeared to be unsound in considerably all chosen cases.

(6) The renvoi result has been come to in some English cases, however normally without talk and a large portion of them by lines of thinking the rationale of which is hard to take after. It is entirely clear that the renvoi is not yet a settled a portion in law of many countries.

# 10. Judgements supporting the doctrine

## 10.1 Judgements supporting the Doctrine



### 10.1.1 Collier v Rivaz

In spite of the fact that various cases are regularly refered to in backing of the total renvoi doctrine, they are a long way from attractive. The first of these is Collier v Rivaz,[43] where the certainties were as per the following:

A British subject, who as indicated by English law was domiciled in Belgium at the time of his demise, had executed seven testamentary instruments, a will and six codicils. The will and two of the postscripts had been executed as per the conventions required by Belgian internal law. The staying four codicils, however formally flat boat as indicated by the Wills Act 1837, were not made in the structure required by Belgian internal law. As indicated by the law of Belgium the testator had never gained a habitation in that nation, since he had not got the fundamental authorisation from the administration. The inquiry was whether the instruments could be confessed to probate in England.

Sir Herbert JENNER, in the wake of propounding the hypothesis that he should sit as a Belgian judge, conceded the will and two addendums to probate since they fulfilled the

[43] (1841) 2 Curt 855; see also *Free v &ere* (1847) 5 Notes of Cases 593; *cf him:nee v Freeman* (1857) 10 Moo PCC 306, infra, p 1266.

conventions of the interior law of the nation in which the testator was domiciled in the English sense. He extended the same liberality to the remaining supplements on the ground that, since the testator had not procured a house in Belgium in the Belgian sense, a judge in Brussels would apply Belgian private international law, under which the formal legitimacy of the instruments would be tried by English internal law.

This choice is interested in numerous reactions. It is evident that, when a decision of law standard chooses a specific lawful framework as the one to administer a given inquiry, it is important to choose whether this implies the inside law or the private universal law of the chose framework. It can't mean both, for the private international law tenets might demonstrate some other legitimate framework, the inner law of which contrasts from the inside law of the chose framework. In the event that the inquiry in Collier v Rivaz had been, not the formal, but rather the vital, validity of the testamentary instruments, and if, for case, some of them had been legal by English internal law yet unlawful by Belgian inside law, while others had been lawful in Belgium however unlawful in England, it would have been difficult to maintain them in their totality. Sir Herbert JENNER, nonetheless, had it both ways. He held that the formal legitimacy of a will can't be denied on the off chance that it fulfils either the internal law or the private international law of the chose lawful framework. There is much to be said for this generous guideline in the one instance of formal legitimacy, since it is clearly alluring that the aim of a testator, beyond all doubt communicated and not inherently frightful, ought to be regarded if reasonably conceivable. What is incomprehensible is that the guideline ought to be permitted a more extensive general operation.

### 10.1.2 Re Antiesley

Rather than *Collier v Rivaz*, *Re Antiesley*[44] was worried with the crucial legitimacy of a will.

An Englishwoman was domiciled at the time of her passing in France as per the standards of English law, however was domiciled in England according to French law. This was on the grounds that she had never gotten the authorisation of the French government which,

[44] Choice ably rules relating to wills are discussed infra. Pp 1264 et seq and 1279 et seq

before 1927, was important for the procurement of domicile. Her testamentary attitudes were legitimate by English internal law, yet invalid by French internal law, since she had neglected to leave 66% of her property to her children's.

RUSSELL J held that the legitimacy of the auras must be dictated by French law. His genuine choice, hence, as per the perspective that a reference to the law of a given nation is a reference to its interior law, yet he didn't achieve his decision in this basic manner. He favored the total renvoi hypothesis. In spite of the fact that the judge's reasoning is not by and large clear, it appears that he at last touched base at the use of French internal law by the accompanying course:

English private between national law accepted the matter to French law similar to the law of the habitation.

A French judge would be accepted by his own tenets to English law. He would, Jadwever, get himself alluded back by English private international law to French law.

Single renvoi is perceived in France.

In this manner, a French court would acknowledge the abatement, and in the outcome would apply French internal law.

It is to be noted, in any case, that, had the judge nor thought himself bound by past powers, he would have wanted to have construct his choice with respect to an option and more straightforward ground. This, the immediate direct opposite of the methodology that we have quite recently considered, was that the regular significance of the expression "the law of a country" attempt" is the inside Law of the nation being referred to. "When we say that French law applies to the organization of the individual domain of an Englishman who bites the dust domiciled in France, we mean .that French municipal law which France applies on account of Frenchmen."

### 10.1.3 Re Ross

Another case worried with the fundamental legitimacy of a will is *Re Ross*[45]

The testatrix, a British subject, who was domiciled in Italy, both in the English and the Italian sense, discarded her property by a will which rejected her child from the list of beneficiaries. This avoidance was legitimate by English internal law, however in spite of Italian internal law which required that one-portion of the property ought to go to the child as his legitirna portio. She exited land in Italy and versatile property both in England and Italy.

LUXMO RE J held as to the movables that as per the English standard of the decision of law the case of the child to his legitima portio must be dictated by Italian law similar to the law of the testatrix's habitation. He then put the inquiry—What is implied by the law of the domicile? Does it allude simply to the city law of the habitation or does it incorporate its standards of private intemational law?

In tin come about the judge connected English internal law and refused the case of the child. This was the conclusion which an Italian judge would have come to. He would have alluded the matter to the law of the nationality and would have dismisses the abatement made to him by English law. As respects the area, the English principle for the decision of law alluded the judge to Italian law similar to the law of the situs. The master confirmation demonstrated that an Italian court would again swing to the law of the nationality and would receive the standard of English inside law material to arrive arranged in England and fitting in with an English testator. It was held again, accordingly, that the case of the child fizzled. Along these lines Mrs Ross was permitted to sidestep one of the cardinal standards of the legitimate framework, the protection of which she had delighted in for the last fifty-one years of her life.

[45] *[1930]* 1 Ch 377

### 10.1.4 Re Askew

The following case, *Re Askew*[46], raised an issue of legitimacy.

By an English marriage settlement made on the marriage of X, a British subject domiciled in England, to his first wife, Y, it was given that X, in the event that he wedded once more, may repudiate to a limited extent the settled trusts and make another arrangement to the offspring of such resulting marriage. Some time before 1911, X, who had for some time been isolated from Y, procured a German home. In 1911, having acquired a separation from an able German court, he wedded Z, in Berlin. Some time before the separation a little girl had been destined to X and Z in Switzerland. In 1913 X exercised his power of revocation and made an appointment in favour of his daughter.

The inquiry under the watchful eye of the English court concerned the legitimacy of this arrangement. A short answer to this inquiry, and one that would have included no reference to private international law, was that the girl of Z was in no sense an offspring of the "consequent marriage", for the main marriage subsisting at the season of her introduction to the world was that in the middle of X and Y. She may be true blue, yet she couldn't in any way, shape or form he the offspring of a non-existing marriage is actuality, nonetheless, was not conveyed to the notification of MAUGHAM j, who demanded that the legitimacy of the arrangement relied on upon whether the girl was genuine. She couldn't guarantee legitimacy under the Legitimacy Act 1926[47] since at the season of her introduction to the world her dad was involved with somebody other than her mother. By English private international law, in any case, her legitimacy relied on upon whether German law, being that of her dad's house both at the time of her introduction to the world furthermore at the season of his marriage to Z, perceived legitimation by resulting marriage. In such a case, German private international law alluded the matter to the law of the father's nationality. Also, the convention of single renvoi was for the most part acknowledged in Germany. On the off chance that, accordingly, a German court were required to affirm on the legitimacy of Z's little girl, it

[46] [1930] 2 Ch. 259

[47] Now replaced by the Legitimacy Act 1976.

would first allude to English law, and afterward, on finding a reduction made by English law to the law of the house, would acknowledge this and apply German inward law. As such, if the English reference to the law of the habitation was a reference to the private international law guidelines of the house, the little girl would be legitimate. MAUGHAM J felt that both on rule and on the powers he was obliged to consider the private international law of Germany. He along these lines ruled for the legitimacy of the girl and the legitimacy of the arrangement.

### 10.1.5 RE Duke

The actualities of *RE Duke*[48] of Wellington, another important case, were as following:

The Duke of Wellington, a British subject domiciled in England, left two wills, one managing his Spanish, the other with his English, property. By the previous he cleared out his property in Spain to the individual who might succeed both to his English dukedom and to his Spanish dukedom of Ciudad Rodrigo." He kicked the bucket a single guy, with the outcome that by the inner law of England his English dukedom went to his uncle, while by the internal law of Spain his sister succeeded to the Spanish dukedom. Along these lines, the Spanish land (property) remained undisposed of, since there was nobody individual qualified to take both dukedoms.

The issue, subsequently, was to recognize the individual to whom the Spanish land (property) passed, and this relied on upon whether the arrangement was to be found in the internal law of Spain or of England. By the previous, the testator was qualified for devise just 50% of his property, the other half going as on intestacy; by English internal law, the area would go to the following Duke of Wellington under the residuary blessing contained in the English will.

WYNN—PARRY J ruled for English internal law for the accompanying reasons: the English decision of law guideline alluded him in the principal occurrence to Spanish law, which, having see to such cases as Re Ross," incorporated the private international law of

[48] [1947] Ch 506

Spain; the Spanish code gave that testate and intestate progression was to be dictated by the national law of the deceased, whatever be the nation in which the property was situated; along these lines, the inquiry was whether a Spanish court, having in this manner been alluded to the national (English) law, would acknowledge the abatement made by that law to the law of the situs. To put it plainly, was the tenet of single renvoi perceived in Spain? In the wake of considering the clashing proof of the master witnesses and the clashing choices of two Spanish courts of first example, the judge achieved the decision that a court in Spain would not acknowledge the reduction made by the national law. Hence, the Duke of Wellington was qualified for the area under the English will.

### 10.1.6 Re Fuld's Estate

A further case to be considered is *Re Fuld's Estate (No* 3)[49] where the facts were as follows:

The testator, a German by origin, had acquired Canadian nationality when resident in On tario, bugle died domiciled in Germany. His will and its second codicil were executed in England and were considered formally valid in England[50]. The three other codicils to his will were executed in Germany and, thus, according to English private international law, German law, as the law of his domicile, governed their formal validity. The last two of these codicils were invalid as to form under German domestic law, but valid under English and Ontario domestic law.

Whit had to be determined was whether *reference* to German law was to German internal law or the whole of German law, including its rules of private international law. This involved a difficult problem of the interpretation of the German Civil Code which allowed reference in sin *cases* to either the law governing validity or that of the place of execution. SCARMAN J construed this latter reference as a reference to the internal law of Germany. However, the reference under German law to the law governing validity was to the law of Ontario as the law of the nationality. This was considered to be a reference to the whole of Ontario law,

[49] 119681P 675; Graveson (1966) 15 ICLQ
[50] 941-944. Under the Wills Act 1861.

including its rules of private international law. These led to a reference back to German law, as the law of the domicile, and this reference back was accepted by German law under the Civil Code. German internal law was applied and, consequently, the codicils were invalid.

### 10.1.7 Neilson v Overseas Projects Corporation of Victoria Ltd.

The nature and application of the renvoi doctrine was the focus of an important recent Western Australian case, *Neilson v Overseas Projects Corporation ofVictoria Ltd*,[51] the facts of which were as follows:

Mrs Neilson, an Australian citizen, domiciled in Western Australia, moved with her husband to China, he having accepted a position with the defendant Victoria corporation, which required him to work there. Subsequently, Mrs Neilson was injured at the couple's place of residence in China, and so sued her husband's employer, in contract and in tort, in Western Australia.

The point in issue was whether application of the Chinese *lex loci delicti* should include the Chinese choice of law rules, which, in the circumstances of the case, conferred a discretion on the forum to apply Australian substantive law, which had a more generous limitation period than domestic Chinese law. By majority,[52] the High Court of Australia held that where the *lex loci delicti* rule requires an Australian court to apply foreign law, the court must, ordinarily at least, apply foreign choice of law rules, and whichever law those rules yield. While three judges were of the view that, in resolving the appeal, it was "unnecessary to postulate a single theory of renvoi to govern all proceedings in Australian courts requiring reference to foreign substantive law"," it is worthy of note that total renvoi was accepted by a majority of five judges.

[51] (2005) 221 ALR 213. For commentary, see Keyes (2005) 13 Torts Law Journal 1; Lu and Carroll (2005) 1 J Priv Int L 35; and Mortensen (2006) 2 J Priv Int L 1

[52] mchtrcu j, dissenting.

## 10.2 Examples Where Renvoi Was Applied in the Non-Exceptional Areas

Given that renvoi sort circumstances don't happen routinely, and notwithstanding when they do the results may not be acknowledged, there are relatively few situations where renvoi has been connected outside of the supposed excellent cases. It is not amazing the High Court did not allude to any tort situations where a renvoi approach had been connected, in its judgment in Neilson. Notwithstanding, some backing for the tenet shows up in some agreement law cases.

### 10.2.1 University of Chicago v Dater

The agreement instance of University of Chicago v Dater[53] is one illustration. There a note was marked in Michigan by a wedded lady. The note was then sent to Illinois for arrangement of a home loan on the composed register. The cash was then best in class in Illinois by the loan specialist. The home loan was later dispossessed in Illinois, with an activity got a Michigan court to recuperate the money owed on the note. The inward law of Michigan gave that a wedded lady couldn't be bound by a marked note, while by the law of Illinois a wedded lady could uninhibitedly contract. Most of the court found that the wife's ability was represented by the law of the spot of contracting, which was chosen as Illinois.

The court then asked what an Illinois court would do in such a case. They found that such a court would hold, to the point that the wife's ability was administered by the inward law of the spot of execution. As indicated by this law, the wife was not at risk. On the premise that an Illinois court would discover the wife not obligated, the Michigan court found the wife not subject. Three individuals from the court disagreed for the situation, dismissing the renvoi.

[53] (1936) 277 Mich 658, 270 NW 175

For this situation there was no circulus inextrabilis. The spot of contracting had no enthusiasm for the use of its law for this situation. It would not have tried to apply its own particular law; therefore the gathering court ought not look to apply what might somehow be the 'best possible law'. There is no trouble about forum shopping. On the off chance that the activity had been started in Illinois, the court would likewise have been alluded to the law of the spot of contracting, which remained Illinois. It would have connected its decision of law standards, mirroring that Illinois had no enthusiasm for the result of the case. So also, Michigan law would have connected.

### 10.2.2 O'Driscoll v J Ray McDermott

As demonstrated, in the 2006 Australian contract instance of O'Driscoll v J Ray McDermott[54], SA103 McLure J acknowledged without choosing that renvoi could apply to an agreement case. This was likewise the position of Walsh J, representing the New South Wales Full Court in *Kay's Leasing Corp v Fletcher*[55]. Obviously, renvoi can't emerge in British contract cases, because of its express prohibition by legislation. However, Collins J was readied to consider the convention in the late semi contract instance of *Barros Mattos Junior v MacDaniels*[56], in any event where the object of the British struggle tenet would better be served by alluding to the decision of law standards of the other ward.

[54] (2006) WASCA 25
[55] (1964) 64 SR (NSW) 195, 207
[56] (2005) EWHC 1323

# 11.Need of renvoi

## 11.1 Need for rejuvination

If we analyse the concept of Renvoi in context of Zhang we can see that there are many advantages of the doctrine and that the doctrine is needed to fulfil certain requirement of a person and also of different nations.

Thus it was, with deference, altogether suitable for the Full Court to consider whether the utilization of the regulation of renvoi would advance or thwart the approach contemplations that the High Court depended upon in Zhang and Pfeiffer in planning the lex loci delicti guideline. All things considered, in recognizing the different arrangement bases whereupon the choice in Zhang depended, the Full Court appeared to focus only on the High Court's attentiveness toward conviction and consistency, disregarding alternate contemplations which educated its choice. At the point when these other arrangement concerns are thought of it as, is clear that the use of renvoi (through the twofold renvoi arrangement) will typically be reliable with, and correlative to, the reception of the lex loci delicti principle in Zhang.

### 11.1.1 Comity and Fidelity to the Law of the Foreign State

One of the key explanations behind embracing the lex loci delicti principle in Zhang was the High Court's view that the standard was an outflow of comity towards different states and gave due acknowledgment to the competency of remote nations to manage exercises inside of their own region. The joint judgment of Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ stressed the benefits of this methodology by citing La Forest J in the Canadian instance of Tolofson v Jensen

The fundamental propose of open international law is that for the most part every state has locale to make and apply law inside of its regional farthest point. Truant a break of

some overriding standard, different states as an issue of "comity" will usually regard such activities and are reluctant to meddle with what another state does inside of those limits.

In a different judgment, Kirby J in like manner contended that the lex loci delicti guideline was important to regard the fitness of states to control and manage wrongs inside of their fringes:

The law of tort, albeit now predominantly compensatory in reason, has extra targets of setting up guidelines of sensible municipal behavior, advancing aversion of wrongs and disseminating costs amongst the group concerned. A decision of law decide that allows an offended party to pick and pick, as indicated by the discussion it chooses, the law that would be connected, would disparage from the powerful control of a given law territory over those parts of its law.

In light of these announcements, it is clear that one of the High Court's purposes behind embracing the lex loci delicti approach in Zhang was that it keeps up a devotion to the law and strategies of the remote state.

Swinging to the issue of renvoi, it is clear that offering impact to the decision of law tenets of an outside state is predictable with this approach. In the event that the purpose behind applying the lex loci delicti is a feeling of comity towards remote nations and acknowledgment of their capability to direct undertakings inside of their own region, why might we disregard an outside state's choice to have a legitimate contention chosen by the laws of some other country? This is surely no less an administrative choice than would be a choice to decide the matter as per the state's own particular laws.

In reality, a state might have true blue purposes behind determining such debate by reference to remote law. For instance, nonnatives who have managed tortious harm in China have regularly been paid compensatory harms well over those accessible under the Chinese law of common risk on the grounds that the Chinese Government is worried that paying pay at nearby rates would stop remote venture and tourism. In light of this approach, it would not be shocking if the Chinese government chose a decision of law decide that connected outside law in tort cases including nonnatives, along these lines guaranteeing that the law of common obligation does not demoralize international

exchange. On the off chance that an Australian court, in choosing a case like Neilson, were to overlook the Chinese decision of law principles, the impact would be to annihilation this administrative strategy and trade off the capacity of China to control the exercises of nonnatives inside of its domain. In this way, it takes after from Zhang that renvoi ought to be connected in tort on the grounds that the dismissal of a remote state's decision of law guidelines might trade off the administrative self-sufficiency of that state over matters happening inside of its domain.

### 11.1.2 Uniformity and a Protection Against Forum Shopping

Another purpose behind the High Court's adoption of the approach of lex loci delicti approach in Zhang was that it guaranteed more prominent consistency between wards. The joint judgment underlined that applying the lex loci delicti gave a 'gathering unbiased interfacing component' and thus guaranteed 'all the more impartial equity to both parties'. This mirrored the Court's perception in Pfeiffer that;

From the point of view of the casualty (the offended party) utilization of the lex loci delicti can be said to make remuneration rely on the mischance of where the tort was conferred, while, if the lex fori is connected, the offended party can depend on whatever discussion will give the best compensation.

This is the feared scourge of 'discussion shopping', which emerges as a consequence of the absence of consistency of inward laws, decision of law guidelines and procedural tenets between states. The impact of these distinctions is that the legitimate result in a given case might at last rely on upon the discussion in which it is litigated. It is by and large felt that gathering shopping is an abomination to the standards whereupon the law of contentions is based on the grounds that 'the motivation behind a decision of laws regulation is to guarantee that a case will be dealt with the same paying little respect to the chance circumstances which regularly decide the forum. By receiving the lex loci delicti guideline, the High Court trusted that it was ensuring so as to secure against discussion shopping that an offended party who disputes a remote tort claim in an

Australian court, as opposed to in the state in which the wrong happened, can't along these lines get away from the use of the laws of that state.

This presumption just holds if the discussion court likewise applies the decision of law tenets of the outside state. This can be exhibited by reconsidering the realities in Neilson. At trial, McKechnie J observed that Article 106 of the General Principles accommodated common risk where one individual's behavior results in mischief to another. along these lines, the Chinese law gave a premise to obligation that, as for Mrs Neilson's case, was extensively like what exists under the normal law of negligence. That said, there were noteworthy contrasts between Chinese law and the Australian basic law in connection to the accessibility of the different heads of harm. While Article 119 of the General Principles accommodated the installment of pay for medicinal costs, loss of salary and loss of procuring limit, no harms are payable under Article 119 (or whatever other procurement of the General Principles) in appreciation to torment and suffering. As harms for agony and enduring are accessible under the Australian basic law, any pay paid as per Chinese law was prone to be fundamentally lower than that which would have been accessible had normal law standards applied.

This refinement between Chinese law and Australian law in connection to the accessible heads of harm gets to be much more huge if Australian law rejects renvoi. Expect that Australian law receives the inward answer for renvoi in tort such that the Supreme Court of Western Australia looks just to the interior law of China to determine Mrs Neilson's tort claim. Expect additionally, for simplicity of clarification, that Chinese law likewise rejects the renvoi. The outcome would be that, were she to contest in Western Australia, Mrs Neilson would be qualified for medicinal costs and pay for loss of salary, yet couldn't recuperate harms for agony and suffering. However, had Mrs Neilson prosecuted her case in China, the Chinese court could apply Article 146 of the General Principles and determination the matter as indicated by the Australian regular law. This would imply that Mrs Neilson could recoup harms for agony and enduring. Along these lines, the decision of discussion incredibly influences Mrs Neilson's privilege to pay. As Adrian Briggs takes note of, the use of renvoi gives a resistance against this sort of gathering shopping since it guarantees that a discussion court chooses a matter precisely as the

remote court would do. If the Supreme Court of Western Australia needed to choose Mrs Neilson's case by the very same rule that a Chinese court would receive, the impact would be to significantly kill the impact of discussion choice on the lawful outcomes of the case. In this setting, the utilization of renvoi is basic to the arrangement of consistency communicated by the High Court in Zhang and Pfeiffer.

So, it is vital not to exaggerate the degree to which applying a remote state's decision of law guidelines will advance consistency and forestall gathering shopping. Regardless of the possibility that we were to receive renvoi in tort, there stay a few handy and legitimate impediments to guaranteeing that outside tort cases are determined in a discussion impartial way. As gathering courts will undoubtedly apply discussion open arrangement and procedural law, all out loyalty to the laws of the remote nation is just not possible. Renvoi is hence obviously not a finish answer for the issue of gathering shopping or the absence of international consistency in connection to substantive law. Despite this capability, renvoi is appropriately viewed as an imperative apparatus by which a court can accomplish more noteworthy between jurisdictional consistency and demoralize gathering shopping, along these lines advancing one of the basic strategies of the choice in Zhang.

### 11.1.3 Party Expectations

In addition, the use of renvoi will add to the accomplishment of a third approach objective behind the lex loci delicti principle; that of meeting sensible gathering desires. In Zhang, Kirby J guaranteed that the lex loci delicti guideline has 'beyond any doubt establishments in human psychology in light of the fact that a man will 'customarily accept that he or she is administered by the law of the law zone in which the occasion, basic to lawful obligation, happens. A comparative perspective was communicated by the joint judgment in Pfeiffer. As Kahn-Freund has clarified, party desires assume a part in decision of law strategy since potential tortfeasors ought to have the capacity to figure the degree to which their behavior opens them to the danger of legitimate liability. In Kahn-

Freund's words, 'They ought to have the capacity to feel safe in Rome in the event that they do as the Romans do.

At first look, this thought might be thought to tell against the utilization of renvoi in tort on the grounds that the operation of the convention might bring about the use of some arrangement of law other than the lex loci delicti. All things considered, by what method can party desires fulfilled if, when in Rome, one does as the Romans do, just to have the law of Gaul apply? Be that as it may, once it is valued that the worry with gathering desires is at last to ensure that potential tort feasors can ascertain their risk (and that potential tort casualties can decide the degree of their lawful assurance), it is clear that the operation of renvoi is reliable with this target since it will more often than not guarantee that the full degree of a tort feasor's obligation is refer-able to a solitary lawful framework. This point is appropriately shown from the realities in Neilson. Accepting that Australian law applies the twofold renvoi arrangement, OPC would have the capacity to figure the full degree of its obligation as indicated by the law of China as it would be connected by the Chinese courts. By differentiation, were we to dismiss the renvoi, OPC would need to figure its potential obligation not just as per Chinese law as it applies in China, additionally regarding Chinese law as it would be connected by Australian courts, and Chinese law as it may be connected in various different locales. This last situation would involve critical cost for Australian organizations trying to work together abroad as they would be compelled to consider their presentation to tortious obligation in various wards. Party desires are along these lines better served by applying renvoi in tort as the precept can ease a significant part of the vulnerability included in multi-jurisdictional operations.

### 11.1.4 Certainty and Predictability

The prior examination reveals some insight into what the High Court implied in Zhang[57] when it focused on the significance of "sureness" in decision of law:

The determination of the lex loci delicti as the wellspring of substantive law meets one of the targets of any decision of law administer, the advancement of assurance in the law. Vulnerability as to the decision of the lex causae induces question as to risk and blocks settlement.

Conviction is esteemed in light of the fact that it advances the fast settlement of cases and evacuates troublesome legitimate impediments that block the determination of question. This is reliable with the other approach objectives laid out better than as the minimisation of discussion shopping and the fulfilment of gathering desires. Along these lines, as opposed to the elucidation of Zhang received by the Full Court, the High Court never proposed that sureness and consistency were finishes in themselves. Their worth emerges from the way that conviction and consistency encourage international exchanges by minimizing the lawful disarray that can emerge from multi-jurisdictional obligation.

In this connection, the Full Court's decision that the utilization of the teaching of renvoi is damaging of conviction and consistency can't be kept up. In Neilson, McLure J contemplated;

The High Court in Zhang has purposely chosen an inflexible decision of law standard in tort to advance sureness and consistency. It would be conflicting with the thinking and result in Zhang to superimpose a renvoi precept the reason and impact of which is to mellow or maintain a strategic distance from the unbending nature of decision of law rules.

This can't, with deference, be right. The High Court in Zhang embraced a way to deal with decision of law that would minimize instability as to risk and evacuate lawful obstructions to universal exchanges. Given that the utilization of renvoi encourages these destinations, the teaching's application will be predictable with the tenet received in

[57] Regie Nationale des Usines Renault SA v Zhang (2002) 210 CLR 491

Pfeiffer and Zhang. In this setting, inquiries of whether the tenet is inflexible or not are to some degree unimportant. The lex loci delicti principle is basically a component for actualizing a specific arrangement of approaches. At last, renvoi ought to be connected if its application is predictable with those arrangements and rejected in the event that it is most certainly not. The way that the instrument might be depicted as "inflexible" offers nothing. For instance, the inflexible dismissal of renvoi will safeguard inconsistencies in the route in which the same reason for activity is chosen purviews; it will be profitable of vulnerability as to risk and will subsequently diminish the shot of settlement. By complexity, the use of renvoi in tort ought to minimize these distinctions along these lines guaranteeing more noteworthy constancy to the thinking in Pfeiffer and Zhang. The way that the previous methodology might be portrayed as 'inflexible', and the last as 'adaptable', can have no bearing on which approach is embraced. Just the last is steady with the approaches which underlie Pfeiffer and Zhang and consequently just the last ought to be connected.

## 11.2 Some other needs of renvoi

There are a number of other uses which emphasises on the use of renvoi and also gives a number of reasons that renvoi should be adopted and applied in nations. These uses mainly focuses on the concept of renvoi and the use of renvoi by different nations. Some of the uses are listed below[58]:-

### 11.2.1 Renvoi as a Consistently Applied Choice of law Rule

Indeed, even its harshest critics have yielded that renvoi ought to be reliably utilized in specific circumstances. In numerous classes of case, the First and Second Restatements are in assention that state courts ought to apply renvoi. Government and state courts routinely utilize renvoi in specific classifications of question. Besides, in the determination of specific international debate renvoi is connected as is normally done. The explanation of this capacity of renvoi as a reliably connected decision of-law principle in a scope of barely characterized classes of case ought to serve fairly to demystify the convention. This segment will exhibit that this "outside word" is, when connected in particular regions of Anglo-American law, vital to the sane intelligibility of both federalism and the contention of laws.

### 11.2.2 Sometimes Renvoi used as an Escape Device

The second use of renvoi distinguished thus is the sort which analysts regularly concentrate on, now and then disregarding the other vital elements of the tenet. Renvoi is regularly portrayed as a "escape device" utilized specifically by judges with a specific end goal to abstain from applying the generally relevant decision of-law principles to decide a question. On the off chance that a decision of-law tenet seems to command the utilization of an outside dispositive law, and such an outcome is not managable to the gathering court, where remote demonstrative principles allude to an option dispositive law there is degree for a judge to "get away from" the outcome generally came to by translating the reference to remote law to incorporate its characteristic laws, and in this manner the option dispositive law (regularly discussion law) will represent the debate.

[58] Robert Sharpe, the multiple uses of renvoi in rule and interest analysis-based choice of law regimes Http://ssrn.com/abstract=1623923

The apparent need to "getaway" emerges from the presence of unbending decision of-law standards in the gathering, which all over don't grant adaptability or legal prudence in the determination of the relevant dispositive law. Where applying these guidelines mechanically would bring about saw injustice to one or both of the gatherings, or would undermine an open arrangement not exactly sufficiently solid to be perceived as a segment of order open, or to a result which is generally undesirable, the utilization of renvoi might give a helpful course by which to evade such an outcome. In like manner, this capacity of renvoi is striking just in tenet based frameworks, since the different types of interest investigation are prone to represent these elements unequivocally when making the decision of-law determination.

### 11.2.3 Renvoi to Establish Rules of Alternative Reference

The third use of renvoi identified herein is the application of the doctrine in order to permit compliance with either the formal requirements for a given act required by the foreign law selected by the forum's conflicts rules, or the requirements mandated by the law referred to by the foreign law's conflicts rules. An example will illustrate:

> If renvoi is not applied to this case, the marriage will be held to be invalid since the choice-of law rule of the forum refers to Utopian law. However, a Utopian court, if seized of the dispute, would hold the marriage to be valid because it complies with Romulpian substantive law. Renvoi may therefore be applied by the forum court in order to permit compliance with the formality requirements of either Utopian law or Romulpian law, creating a de facto rule of alternative reference.[59]

Courts once in a while explain such principles of option reference unequivocally. Be that as it may, it is feasible for such guidelines to be made by a reliable group of case law. What separates this methodology from the utilization of "getaway gadget" renvoi to

[59] Robert Sharpe, the multiple uses of renvoi in rule and interest analysis-based choice of law regimes Http://ssrn.com/abstract=1623923 , p.70

secure alluring results in given cases is the legal expectation to make or add to such a predictable assortment of case law keeping in mind the end goal to propagate true guidelines of option reference, by which gatherings might have the capacity to arrange their behavior with some certainty.

The classifications of case in which this sort of renvoi is prone to be most pervasive are for the most part those concerning convention prerequisites, particularly for the production of relational unions and wills.

Uncertain has noticed that renvoi initially picked up its a dependable balance in English law in cases concerning the formal legitimacy of wills, due to the unbending English lex domicilii decision of-law lead, the more adaptable clashes guidelines of option reference on the Continent, and the legal predisposition for maintaining wills enduring unimportant formal defects. It appears to be clear that the goal of such cases, when taken together, was to constrain an accepted alteration of the inflexible English clashes standard towards a more adaptable Continental-style principle of option reference, allowing formal consistence with either the lex domicilii or the law of the spot in which the will was made.

The degree for this utilization of renvoi is to a great degree restricted, for, as Morris notes, the key legitimacy of a will may not be controlled by tenets of option reference. In such cases one overseeing law should be kept away from the foolish result that there are various beneficiaries to the same property. "Standards of lternative reference" renvoi accordingly shows up to a great extent constrained to cases concerning convention prerequisites. This ought not weaken its significance. Indeed, even Lorenzen, one of the harshest faultfinders of renvoi, has acknowledged that principles of option reference might be valuable in custom prerequisite cases, however in surrendering this he communicated a solid inclination for an unequivocal change to the decision of-law guideline of the discussion instead of its true accomplishment by means of renvoi. notwithstanding the standard hesitance or powerlessness of judges to revise the hidden decision of-law tenet of the gathering, or authoritative inaction, this utilization of renvoi would seem to offer a suitable solution for the generally cruel outcomes coming about because of an inflexible use of the decision of-law principle of the discussion.

### 11.2.4 Renvoi to Assist in the Identification of State Interests

> "A truly functional approach to choice of law problems would ultimately develop rather particularized and informative choice of law rules. These rules would, in large measure, set out the jurisdiction's thinking about the reach and force, in given multijurisdictional situations, of the various policies that it holds… Under such a system, the renvoi, if by that is meant a consideration of the choice of law rules held by other concerned jurisdictions, would constitute an essential ingredient in the handling of conflicts problems."

At the heart of interest examination lies the procedure of recognizable proof of the strategies and contemplations which are taken to constitute the legislative hobbies of each of the states whose laws are conceivably appropriate. Yet governing bodies infrequently give a comprehensive rundown of the state intrigues ensnared when passing an authoritative demonstration, rarer still are administrators swung to the conceivable multistate outcomes which might emerge as a consequence of their authorizations. The procedure by which administrative hobbies are recognized is thusly a long way from clear, for the most part depending upon a blend of derivation and theory to give workable answers. It is presented that by utilizing renvoi to allow thought of a state's decision of-law standards, it might be conceivable to distinguish something more about the relative state intrigues which emerge in a given decision of-law circumstance. All things considered, if an outside court would not itself apply its own law to a given case; does this not show an absence of state enthusiasm for determining the issue? Why ought to the discussion demonstration "in addition to royaliste que le return for capital invested" and pronounce that a remote law is intrigued where the confirmation accessible recommends generally?

Currie considered that decision of law guidelines doesn't contain articulations of administrative expectation or enthusiasm for applying their own law to multistate debate. He commented that "a decision of law standard is a void and bloodless thing. Really, rather than announcing an overriding open arrangement, it broadcasts the state's lack of interest to the consequence of the case". Undoubtedly, Currie considered renvoi to be of

no broad application in interest examination decision of law administrations by any means, subsequent to under this approach the administering law is chosen with reference to the legislative hobbies in question, thus he considered, the decision of-law made won't require the business of an "escape device" to achieve an attractive result. It is presented that this neglects to address the key renvoi inquiry of what is implied by applying a given law when interest examination has been connected to choose it. Where the legislative hobbies are stacked for one law, for instance, since that state is the most intrigued state, the inquiry remains whether we ought to apply the substantive tenets of that state or whether we ought to apply the entire law of that state, including its contention of laws guidelines.

### 11.2.5 Renvoi as a Rule of Priority

The fifth and final use of renvoi identified in this paper is one which is somewhat speculative. Under an interest analysis choice of law regime, it is suggested that renvoi could prove useful in helping courts to resolve cases in which the identification of interests has not been dispositive, in particular where the initial governmental interest inquiry results not in a false conflict but an un-provided for situation. As will be detailed, this use remains an option for courts to resolve choice of law disputes whether or not "identification of state interests" renvoi is employed.[60]

[60] Robert Sharpe, the multiple uses of renvoi in rule and interest analysis-based choice of law regimes Http://ssrn.com/abstract=1623923 , p.88

# 12. Understanding ways to resolve renvoi: A problem based solution

## 12.1 The problem stated:-

In order to know that Renvoi can be solved by nations and a proper and easy solution to this problem can be achieved there is a problem based solution. In this report we will also try to see the possible ways to handle or to decide a case. By this way we can know and try to provide with a solution to the given problem.

Once it is decided that a court has jurisdiction, how the issue before it is to be characterised in terms of private international law and what choice of law rules are applicable, it might be thought that the judge's task was reaching its conclusion. Nothing remains for him to do but apply the chosen law. If this is English law there is no doubt that what he is required to do is to give effect to English internal law. Thus, where a person dies intestate domiciled in England leaving movables here the rules of distribution contained in the Administration of Estates Act 1925 must be applied. There can be no question of paying any further regard to the private international law of England. The reasoning of that department of the law is purely selective and its selection of English law as the applicable law must perforce refer to English Municipal law i.e. the rules applicable to a purely domestic situation having no foreign complexion.

If, however, the applicable law is that of a foreign country the situation may be more complex. The difficulty is to determine what is meant by the applicable "law". If, for example, the English rule for the choice of law refers to the law of Italy, what meaning must be attributed to "the law of Italy"? The difficulty is not obvious at first sight, but it can be demon Stated by a simple illustration.

X, a British subject, dies intestate, domiciled in Italy, and an English court is required to decide how his movables in England are to be distributed.

It is clearly desirable that the mode of distribution should be the same everywhere, in the sense that no matter what national court deals with the matter there ought to be universal agreement as to what particular legal system shall indicate the actual beneficiaries. The fact, however, that there are different systems of private international law militates against this ideal solution. Thus, according to the English rules for the choice of law, the question of intestate successor movables is governed by Italian law as being the law of X's domicile at the time Meath, but according to the Italian rules it must be referred to the law of England as being the law of his nationality. In the above example, for instance, an English court has no option but to refer the question of succession to Italian law; while an Italian judge if faced with this issue is under an equal necessity to apply the national law. The English judge, of course, is exclusively governed by his own system of private international law, and must therefore decide that X's goods shall be distributed according to Italian law. Despite this obvious conclusion, however, we are still confronted with the questions: what is meant by Italian law? Does it mean Italian internal law, i.e. the rules enacted by the Italian Code analogous to section 46 of the Administration of Estates Act 1925 which regulate the distribution of an intestate's property? Or does it mean the whole of Italian law, including in particular the rules of private international law as recognised in Italy? If the latter is the correct meaning, a further difficulty is caused by the difference between the English and Italian rules of the choice of law; for on referring to Italian private international law we find ourselves referred back to English law. This being so, the question is whether we are to ignore the divergent Italian rule or to accept the reference back that it makes. IF we accept the reference back, are we to stop finally at that point and to distribute X's goods according to the Administration of Estates Act?

## 12.2 Possible solutions:

At the point when a case is confused in this design, attributable to a distinction in the private international law of two nations, there are three conceivable solutions. These are as per the following:

The judge who is confronted with this issue and who is alluded by English private international law to, say, the law of Italy, might

(i) Take "the law of Italy" to mean the inward law of Italy; or

(ii) Decide the case on the assumption that the principle of single renvoi is perceived by English law; or

(iii) Take "the law of Italy" to mean the law which an Italian judge would control in the event that he were seised of the matter, ie the principle of twofold renvoi.

These conceivable courses will now be talked about to demonstrate that in a few sorts of case the third arrangement, whether rightly or wrongly, has been often embraced by the judges.

### 1.2.1 Apply internal law only

The primary arrangement, and the one which is as a rule right and attractive, is to peruse the expression "the law of the nation" as importance just the inward decides of that law.
The accompanying would appear to speak to the sensible perspective:
In the event that England picks the law of a man's house as the best one to apply to a certain relationship, does she mean the normal law for customary individuals, his companions furthermore, neighbors, in that home? Then again does she incorporate that nation's tenets for the decision of law? Judgment skills could answer that the last option is ridiculous and otiose: a principle for the decision of a fitting law has as of now been connected, to be specific our own. To continue to embrace a remote standard is to choose the same question twice over. This would appear to be as per the goal of the propositus.

In the event that, for example, a man deliberately relinquishes England and gains a home in Italy where he permanently dwells until his passing numerous years after the fact, the characteristic induction is that he readily submits himself to the interior law of that nation. This appears to be likewise to be the undeniable answer in those cases, for example, contract, where the gatherings are permitted explicitly to pick the law to administer their relationship. Few representatives would intentionally choose the doctrine of renvoi. This methodology has been unquestionably received in no less than two early English choices, one by a court of first instance, the other by the Privy Councils It is, and dependably has been, unknowingly embraced in a huge number of choices.'

### 12.2.2 Doctrine of single renvoi

The second arrangement is to apply the regulation of renvoi, as single renvoi. Such convention is to this impact: if a judge in nation An is alluded by his own particular principle of the decision of a law to the "law" of nation B, however the guideline of the decision of TaZr in B alludes such a case to the law" of A, then the judge in An unquestionable requirement apply the inward law of his own nation. The operation of this well known yet deplorable regulation, which requests that a reference A? the law of a nation might mean a reference to the entire of its law, including its private Inter¬national law, is best clarified by the case officially given:

X, a British subject, passes on intestate, domiciled in Italy, and an English court is required to choose how his movables in England are to be dispersed.

The English court is coordinated by its own private international law to allude this inquiry of dispersion to Italian law just like the law of the expired's habitation. - When, notwithstanding, it analyzes the procurement identifying with the decision of the relevant law contained in the Italian Code, it finds that on account of progression to movables the Code lean towards the law of the expired's nationality to that of his home, and that if an Italian court had been listening to this matter in the principal occasion it would have depended on the law of England. Along these lines, the English court gets itself alluded

back to English law a being the law of X's nationality. There is a renvoi or abatement to English law.

On the off chance that the court acknowledges this abatement and conveys the property as indicated by the Administration of Estates Act 1925, it is consistent with say that the regulation of renvoi is a piece of English law Italian law has been permitted, not to give an immediate answer for the issue undqr:consideration, yet to show what legitimate framework might outfit the last arrangement. Where the court that is listening to the matter acknowledges the abatement and applies its own civil law it perceives the teaching in its least complex structure. Renvoi, appropriately alleged, is best exemplifitictby the surely understood choice of the French Cour de Cassation in Forgo's cases.

Do without, a Bavarian national, passed on intestate in France, where he had lived following the age of five. The inquiry under the steady gaze of the French court was whether his movables in France ought to be conveyed by interior law of France or of Bavaria. Insurance relatives were qualified for succeed by Bavarian law, however under French law the property went to the French government to the prohibition of collaterals. French private universal law alluded the matter of progression to Bavarian law, yet private international law alluded it to French law. The Cour de Cassation in France acknowledged the abatement and connected the progression procurements of French law.

Where, as for Forgo's situation, there are just two legitimate frameworks concerned where the reference is only from nation A to nation B and again from B to A the principle of renvoi shows up in its easiest structure. It can best be depicted as remission. A case might happen, however, where the reference is from A to B, and from B to C. Assume, for occurrence, that an Italian testator passes on domiciled in France leaving movables in England, English law will allude the topic of progression to movables to the law of his habitation, French law. On the off chance that, be that as it may, France were to allude the same inquiry to the law of his nationality, Italian law, this would be a case of reference from B to C, best portrayed as transmission.

This specific principle of renvoi, whether as abatement or transmission, which is presently by and large calIed partiator single renvoi,9 is not a portion of English law 1d

That is to say, if English law alludes a matter to the law of the habitation and if the last dispatches the inquiry to English law, the judge does not acknowledge the reduction and apply English interior law. He doesn't go about as the French court did for Forgo's situation. It appears to be pointless, in this manner, to expand the protests to which the precept is open."

### 12.2.3 Doctrine of total renvoi

#### 12.2.3.1 The Doctrine stated

The third conceivable arrangement is to receive what might be known as the remote court hypothesis or the "precept of twofold renvoi" or aggregate renvoi," or "the English tenet of renvoi". This requests an English judge, who is alluded by his own particular law to the legitimate arrangement of an outside nation, must apply whatever law a court in that remote nation would apply on the off chance that it were listening to the case. Give us a chance to expect, for instance, an inquiry emerges concerning the testamentary airs of a British subject who bites the dust domiciled in Belgium, leaving resources in England. A Belgian judge managing this matter would be alluded by his tenets of private international law to English law, yet he would then find that the case was transmitted to him by English law. Proof should subsequently be illustrated in the English proceedings to show what the Belgian judge would truth be told do. He may acknowledge the reduction and apply his own inward law, and this would be his course if renvoi in the Forgo sense (single renvoi) is perceived in Belgium, or he may dismiss the abatement and apply English interior law. Whatever he would do relentlessly decides the choice of the English judge." If this third arrangement is received, understand that the choice given by the English judge will rely on upon whether the precept of single renvoi is recognised by the specific remote law to which he is alluded. The regulation, for case, is denied in Italy yet perceived in France. In this way, if the issue in England is the inherent legitimacy of a will made by a British subject domiciled in Italy, the judge, on the off chance that he is to make a nonexistent legal excursion to Italy, will reason as takes after:

An Italian judge would allude the matter to English law, just like the national law of the propositus. English law transmits the inquiry to Italian law similar to the law of his house.

Italian law does not acknowledge this abatement, since it revokes the single renvoi regulation. In this manner an Italian judge would apply English inward law.

A French home, in any case, would deliver the inverse result, subsequent to a court sitting in France would acknowledge the abatement from England and would ultimately apply French inner law.

### 12.2.3.2 Objections to the doctrine

This third arrangement does not need bolster in England, North America and Australia. Certain English choices, which will be talked about later, might be refered to support its; for the duration of his life Dicey kept up its truth; the editorial manager of his fifth version was just as solid in pushing its benefits;" and an American legal scholar totals up his decisions in these words: When a court is alluded by its own contentions tenet to a remote law, it ought to, as usual, look to the whole outside law as the outside court would oversee it.

Before assessing the estimation of the English choices, along these lines, it is suitable to consider a couple of the complaints that might be raised to this aggregate renvoi regulation. The weight of the accompanying pages is that it is shocking on a basic level, depends on unconvincing power and can't be said to speak to the general tenet of English law. It is presented that, subject to certain very much characterized special cases, an English judge, when alluded by a principle for the decision of law to the legitimate arrangement of an outside nation, is not required to consider whether the renvoi tenet is perceived by the private international law of either nation, however Must control the inward law of the lawful framework to which he has been alluded.

The accompanying protests, among others, might be coordinated against the principle:

### 12.2.3.2.1 The total renvoi doctrine does not necessarily ensure uniform decisions

The praiseworthy goal of the individuals who support the convention both of single or of aggregate renvoi is to guarantee that the same choice might be given on the same debated certainties, regardless of the nation in which the case is listened. In truth, be that as it may, the regulation of renvoi, in whatever structure it is communicated, will deliver this consistency just on the off chance that it is perceived in one of the nations concerned and dismisses in the other not on the off chance that it is perceived in both. On the off chance that, for instance, the law of the house, to which the English judge is alluded, appoints that the case to be chosen precisely as the national (English) court would choose it, what is the judge to do on finding that by English law his choice is to be precisely what it would be in the nation of the domicile? Where is an end to be called to the procedure of passing the ball from one judge to another? There is no evident route in which this inseparable circle can be broken or in which this international session of tennis can be ended.

Consistency will, in fact, be accomplished if the law of the habitation disavows the precept of aggregate renvoi, i.e. if, rather than looking for direction from a remote judge, it completely provides that the national (English) law might represent the matter, for this situation English inward law will apply and amicability will win. The reality of the matter is that the aggregate renvoi tenet is obviously unrecognized in nations outside the Commonwealth, however in any case it is hard to endorse a principle which is workable just flexible other nation rejects it". The truth of the matter is, obviously, that consistency of choices is unattainable on any predictable principle as to matters that are resolved in a few nations by the law of the nationality, in others by the law of the house.

A second snag to consistency of choices is that the remote court regulation does nor require, indeed does not permit, the English judge to wear the mantle of his outside partner with no reservations. Matters that are delegated procedural in England must be submitted to English interior law, despite the fact that the remote judge may have viewed them as substantive. This might well prompt a disparity of result. Additionally, the use of

a principle of remote law will here and there be prohibited on grounds of open approach or on the grounds that it is thought to be a reformatory, income or other open law matter.

### 12.2.3.2.2 The total renvoi doctrine signifies the virtual capitulation of the English rules for choice of law

Stripped of its verbiage, the regulation includes nothing not exactly a substitution of the remote for the English decision of law guidelines. For the situation, for occurrence, of the British subject who bites the dust intestate domiciled in Italy, the English standard chooses the law of Italy as the representing law, however the comparable Italian principle chooses the law of England. Whenever, along these lines, the English judge concedes to the choice that an Italian judge would have given, he applies the inward law of England and in this way demonstrates an inclination for the Italian particular tenet. The English tenet is casted off, since it doesn't meet with the endorsement of the legislator in Italy. This, in fact, is the apotheosis of comity. In addition, a principle for the decision of the appropriate law is basically specific in nature, and that it ought to have no other impact than to choose another and opposing standard of choice flavors of inconsistency and Paradox. Besides, the use of the law chose by the outside nation's decision of law tenets might be inadmissible openly arrangement terms.

One intense commentator, be that as it may, discovers nothing unusual in this surrender to a remote principle for the decision of law. He denies that there is any legitimate motivation behind why an English standard of this nature ought not be taken to demonstrate the private international law of a remote nation instead of its inner law. To respect a reference to the law of the home as preference to the inside law seems to be, he says, just to make one wonder. This contention, it is submitted, disregards both the nature and genesis of a guideline for the decision of the material law. Actually such a principle depends on considerable grounds of national strategy. It speaks to what appears to the instituting power to be correct and appropriate, having respect to the sociological and viable contemplations included. The English standard, for example, that an intestate's movables might be appropriated by law of his keep going residence is established on the thinking that privileges of progression ought to rely on upon the law of the nation where

the expired set up his changeless home. Having deliberately turned into a tenant of the nation, it is the perspective of English law that in this matter he ought to be on the same balance as different occupants. Also, the characteristic deduction is that he submits himself to the law which ties his companions and neighbors. This would appear to he his assumed aim. In this manner, if the reference to the law of his house is viewed as a kind of perspective to whatever inward framework the private international law of the home might pick, then not just is the purposeful approach of English law turned around, yet the likely expectation of the proposition is overlooked. Without a doubt, his desires might be ridiculed. He might, for occurrence, have shunned making a will, having been content with the nearby standards overseeing intestacy, the substance of which it will have been a straightforward matter for him to find out. An entirely diverse arrangement of tenets, be that as it may, might work if the private international law of his home is to have impact.

### 12.2.3.2.3 The total renvoi doctrine is difficult to apply

The teaching obliges the English judge to determine as a certainty the exact choice that the remote court would give. This faces him with two challenges, First, he should ascertain what view wins in the remote nation concerning the precept of single renvoi. Furthermore, where the outside standard for the decision of law chooses the national law of the propositus, the judge must find out what is implied by national law.

As have as of now seen, the picked law that rises up out of a use of the teaching depends, entomb alia, on whether the convention of single renvoi is perceived by the law of the home." If the court of the house would acknowledge the abatement made to it by —

English law, it would & termite the case as indicated by its own particular inward law; else it would apply the inside law of England. This reliance of the privileges of the gatherings on the disposition of the law of the habitation to the renvoi precept is a reason for intense embarrassment. There are few matters on which it is more hard to get solid data, not slightest in light of the undue impact of master witnesses over the procedure. On

the other hand, the English judge might be gone up against with a fairly laborious and harmful undertaking, as witness the accompanying comments of WYNN-PARRY J:

It word be hard to envision a harder undertaking than that which confronts me, to be specific, of clarifying interestingly either to this nation or to Spain the important law of Spain as it would be elucidated by the Supreme Court of Spain, which up to the present time has made no affirmation on the subject, and basing that piece on proof which fulfills me that on this subject there exists a significant cleavage of lawful feeling in Spain and two clashing choices of courts of sub-par locale.

The second trouble that might emerge is to credit an unequivocal intending to the expression "national law". At the point when the private international law standards of the nation in which the English judge is ventured to sit select the nationality of a man as the associating component, it gets to be important to correspond the national law with some exact arrangement of inside law by which the issue under the steady gaze of the court might be resolved. This is a straightforward matter when the individual is a national of some nation, for example, Sweden, which has a unitary arrangement of regional law. There is a solitary collection of interior law relevant all through the region known as Sweden. The position is far various where the nation of nationality comprises a few frameworks of regional law, as is valid for instance of the United Kingdom and the USA. What, for case, is the national law of a British subject? For an English court, the inquiry is truly pointless, in light of the fact that the law that represents a British subject in individual matters fluctuates as indicated by the domain of the outside nation in which he is domiciled. It is one framework in England, another in Scotland, thus looking into the issue of Re O'Ketft will serve to outline both the way of the trouble and the presumptiveness of the aggregate renvoi convention. The certainties were these:

The inquiry under the steady gaze of the English court was the path in which the movables of X, an old maid who passed on intestate, were to be dispersed. X's dad was conceived in 1835 in Ireland, yet at 22 years old he went to India, and aside from different stays in Europe lived there for the duration of his life and kicked the bucket in Calcutta in 1885. X was conceived in India in 1860; from 1867 to 1890 she lived in different spots in England, France and Spain; however in 1890 she settled down in

Naples and dwelled there until her passing 47 years after the fact in 1937. About the year 1878 she had made a short visit in Ireland with her dad. She never lost her British nationality, however it was held that she had gained a habitation in Italy.

The law chose by English private international law to oversee the subject of distribution was, along these lines, the Law of her habitation. Had an Italian judge been listening to the case, nonetheless, he would have been alluded to her national law by the Italian Civil Code. He would have dismisses any reduction made to him by the national law, since the single renvoi regulation had not been embraced in Italy. The Civil Code utilized the general expression "national law" and neglected to characterize what this implies when the nation of nationality contains more than one legitimate framework. Which arrangement of interior law, then, out of those having some connection to X, would be viewed by an Italian court as applicable? The issue brought up for the situation was whether it was the law of England, Ireland or India. Which of these frameworks would be chosen by a court in Italy? The expert witnesses concurred that it would be the law of the nation to which X "had a place" at the time of her demise. She unquestionably did not - have a place", whatever that might mean, to England in the feeling of pulling in to herself English inward law, for she had invested no obvious energy in the nation. She may maybe, by reason of her introduction to the world in Calcutta, be viewed as having a place with India, however she had not been there for a long time. The sensible man may even be pardoned for believing that she most legitimately had a place with Italy, the nation where she had consistently spent the last forty-seven years of her life. CROSSMAN j, in any case, would have none of these. He returned ka-X's residence of origin, and held that she fit in with Ireland since that was the nation where her dad was domiciled at the season of her introduction to the world. In the outcome, in this manner, the progression to her property was represented by the law of the nation which she had never entered ept amid one short visit about sixty years before her demise; which was not even a different political unit until sixty-two years after her introduction to the world; of whose progression laws she was most likely significantly and joyfully oblivious; and under the law of which it was outlandish in the circumstances for her to case citizenship. The convolutions by which such a wonderful result is come to are fascinating. To start with, the judge is alluded bb the English tenet to the law of the habitation, which in the

moment case means the law of the home of decision; then he bows to the unrivalled knowledge of a remote lawmaker and permits the law of the house to be supplanted by the law of the nationality; then, after discovering that the law of the nationality is insignificant, he tosses himself back on the domicile of inception; and accordingly decides the privileges of the gatherings by a lawful framework which is neither the national law nor the law of the residence as imagined by the English standard for decision of law. Remark is unquestionably unnecessary.

# An ambitious approach to *Renvoi*

When confronted with a choice of law problem a court will have to decide which one of the possible applicable laws will chose to apply. For answering this question a judge will consult the forum's conflicts rules. Two outcomes might result: (i) the judge might be directed to the internal law of the forum, or (ii) to the law of another state. The latter situation raises a supplementary question: is the judge to apply the internal law of the foreign system to which the forum conflicts rules point or is it to apply that law including its choice of law rules? In the former situation the situation will have a clear outcome, but in the latter how is the judge going to apply the law if the conflict rules of the second state are pointing not to that state's internal law, but again to the law of the forum (referred to as remission). Logically, the reference to the law of the forum includes its conflict rules, and we can see this will result in sending the matter back and forth between the two laws. The doctrine by which the reference made by the conflict rules is a reference to a state's law including its choice of law rules is defined by the term of *renvoi*.[61]Although, the term *renvoi* is usually used to refer to the process of remission, sometimes it is also used to refer to the situation when the foreign law points not back to the law of the forum but to the law of a third state, process know as transmission.[62]As we can see, this situations will appear only if the conflict rules of the two states point to different laws, therefore it can be said that *renvoi* is a conflict of the conflict laws.[63]

The problem of accepting or rejecting this theory first appeared in 1841[64] in England although it was not expressly mentioned until in 1903 in case *Johnson Re*.[65] A large amount of case law and doctrine was developed on this topic since.[66]Although a lot of

[61]Roosevelt, Kermit III, "Resolving Renvoi: The Bewitchment of Our Intelligence by Means of Language" (2005). Faculty Scholarship Paper 649.
Http://scholarship.law.upenn.edu/faculty_scholarship/649
[62]David Alexander Hughes, 'The Insolubility of Renvoi and its Consequences' 6(1) Journal of Private International Law 195, 197 (2010)
[63]John Delatre Falconbridge, *Essays on the Conflict of Laws* 2nd Edition, Canada Law Book Company 159 (1954)
[64]*Collier v. Rivaz* (1841) 2 Curt 855.
[65][1903] 1 Ch 821.
[66]Ernst Otto Schreiber Jr, The Doctrine of the Renvoi in Anglo American Law, Harvard Law Review 31, 523, 523. (1917)

papers were written suggesting the result wanted to be reached,[67] a solution seems still difficult to find.[68]

The extent of the paper is to bring a brief review of the point of the principle, and demonstrate that it is, at any rate hypothetically, conceivable to locate a legitimate application for the teaching to accomplish its point. For this I will give the issues related both, acknowledgment and refusal of the tenet and spotlight on two imperative methodologies: the approach investigation hypothesis, which essentially takes care of the issue by expelling the teaching from the zone of contention of laws, and one that contends for an imminent advancement of its application alongside an optional arrangement of guidelines.

For the starting it must be noticed that most commentators have ordered three conceivable answers for the issue of renvoi.

A simple and discerning arrangement' is for the discussion to dismiss the renvoi. The inner law hypothesis, as this is alluded to, says that at whatever point the law of the of the gathering focuses to a law that consequently alludes the matter back to the law of the discussion, the judge ought to ignore the procurements of the decision of-law principles of the remote law and apply specifically the inside law that he was indicated by its residential decision of-law rules. The central faultfinder of this hypothesis, is that despite the fact that applying the law of the outside nation, at times it applies that law when not even the courts in that nation would apply it. Legitimizing this qualification by a tenet in the law of the discussion, brings up the issue whether this methodology is true blue or not.

Another arrangement would be for the court to embrace the 'halfway renvoi hypothesis' which underpins a reference to the entire law of the outside nation, including its decision of-law principles. Implying that the gathering law will acknowledge the renvoi. In any case, it is viewed as that the abatement is just made to the interior law of the discussion. It was scrutinized in light of the fact that it neglects the likelihood that the outside law may

[67]Joseph M. Cormack, 'Renvoi, Characterization, Localization and Preliminary Questions in the Conflict of Laws (1941) 14 Southern California Law Review 221, 249.
[68] Larry Kramer, 'Return of the Renvoi' 66 New York University Law Review 979, 1003-1013 (1991)

embrace the same hypothesis and in this way acknowledge a second reduction from the law of the gathering. It is likewise contended that this result has no consistent backing, subsequent to once you concede the 'significance of the decision of-law standards. Why the procedure of reference and counter-reference ought-not go on until the end of time'?

Further, the court can receive the more intricate 'remote court hypothesis' likewise called the aggregate or twofold renvoi hypothesis. It's fundamental thought is that once the law of another nation has been resolved to represent the debate, the court will choose the case as it would be chosen by the courts in that nation. That implies, it will apply the outside law including its decision of-law standards, and the renvoi hypothesis that this nation receives. Thusly, the court may at last apply the law of the gathering yet this is to be chosen by the contention principles of the remote framework, whether it alludes back to the inside law of the discussion or to the entire law of the discussion, including it decision of law guidelines. In the last circumstance, if the outside court applies the 'fractional renvoi' hypothesis the seised court will at last apply the remote law, yet in the event that it receives the same 'twofold renvoi' hypothesis than it will wind up in what is known as the "mirror" issue, bringing about an 'interminable circle' of sending and resending the issue starting with one law then onto the next.

The inquiry whether renvoi ought to be acknowledged or not has been the subject of awesome level headed discussion but rather yet no reasonable arrangement has been found. Solid doctrinal voices are to be found on both sides.

Quickly expressing defenders of the teaching contended that it is in opposition to the point of the own decision of-law standards to apply an outside law without accomplishing the outcome that would be accomplished by the courts of the remote state. Correlatively, dismissing renvoi would make 'instability and inconsistency' and make the privileges of the gatherings enforceable basically on the unimportant actuality of which court is seised[69].

Renvoi is viewed as a component for accomplishing consistency of choice paying little mind to the nation where a choice is being looked for. It is albeit flawed how this can be

[69] Griswold (n **Error! Bookmark not defined.**) 1180-1181

accomplished if one considers as far as possible on characterisation of the issue or the general population arrangement of the gathering. Remembering this, one must know that in spite of the fact that amicability of choice can't generally be accomplished, this is the primary reason for the precept. In any case, only, a reaction of securing 'the sensible desires of people in the light of different frameworks of law.' Much care must be taken when this contention, since it is not generally important to receive such a confused instrument as renvoi so as to ensure the sensible desires of the gatherings, with respect to case in spite of the fact that the gatherings incorporate a decision of court proviso in their agreement and expect the law of that court to be connected, if one gathering series the courts of another state, the matter would effectively been settled by declaring so as to decline the ward or that gatherings submitted to the law of the discussion, as opposed to obliging the court to embrace a choice hypothetically indistinguishable to what the "picked" court would receive.

It is debilitating gathering shopping, for the individuals who search for more great substantive laws, yet not for those pursuing more positive procedural rights. Despite the fact that this may be accomplished by creating jurisdictional standards, renvoi could bring the 'case in its common gathering by direct means', without the need to decrease purview, along these lines sparing time, and permitting a more adaptable and nitty gritty materialness conversely with the inflexibility of ward tenets.

Last noteworthy contention is that renvoi helps judges to achieve a fair choice. Practically speaking it is known as the 'outcome particular methodology' and truth be told permits judges to control the contention leads and apply the law they consider to be more proper. Truly now and again it was a helpful device for the courts to achieve a fair result and to supplant certain legitimate perspectives that are not mirroring the social reality any longer, but rather it likewise gives the judges energy to change the law, which 'obviously brings down the gatherings' desires of assurance'.

On the other side it was contended that the precept raises commonsense, legal and consistent issues. Above all else when a court needs to apply the renvoi principle it is required for the outside law to be demonstrated. This infers long skill and renders the court procedures wasteful and hard to handle. It is surmised that from the muddled

assignment of managing outside legitimate ideas, the court will – at any rate at the very least level – twist the remote law. Moreover, the court may be 'misguided as to the remote law' or fall flat 'to decipher precisely the confirmation of the outside law' which might at last decide a 'grotesques result or an unsuccessful labor of equity'.

Next it had been said that the gathering's contention rules have been precisely grown, for example, to choose the law thought to be more suitable to manage the issue. Subsequently, it is unreasonable to offer inclination to the decision of law tenets of another framework which would choose a wrong law to represent the matter. For instance, if there should arise an occurrence of an English domiciling individual with an outside nationality, kicking the bucket intestate and leaving moveable property in England, which he would hope to be administered by the law of the last residence (England) however the contention principles of the law of nationality see it as being represented by the law of nationality.

Further, as it results from the English case law it is hard to apply the aggregate renvoi teaching, in situations where the methodology to renvoi is not immovably settled in the outside nation either.

At last, as beforehand said there is no consistent contention to stop the referencing and counter referencing between two laws. When you acknowledge that a reference to the remote law incorporates its decision of law standards, you need to acknowledge that a further reference is including the contention guidelines of the law alluded to, et cetera. Subsequently, the aggregate renvoi principle must be connected if the other nation rejects renvoi or embraces the incomplete renvoi hypothesis.

Around 60 years back, the issue of renvoi was considered as being evacuated by the 'administrative interest investigation's contended for the most part by Brainerd Currie. As he would see it the judge confronted with a decision of-law issue must figure out if both clear material laws, have an enthusiasm to advance the state's approach in that specific case. On the off chance that one and only state's advantage requires to be progressed – there is a 'false clash' – than the law of that state ought to be connected, if both the law of the gathering and the outside law have an "enthusiasm" to be connected – there is a

'genuine clash' – than the judge ought to apply the law of the discussion. As Currie watched, if the outside law would be appropriate just when it has an enthusiasm, than it is rationale that we are just alluding to the substantive remote law, barring its contention rules. In this way, the idea of renvoi can be ruled out. This arrangement appears to be alluring yet for a few reasons a state might not have any desire to uphold its approach in each genuine clash. Quickly expressing: (i) applying remote law sometimes urges different states to apply additionally the strategy of gathering on the off chance that got different states, conversely discussion approach would just be progressed in genuine clashes; (ii) courts ought not overlook that at times the law of another nation ought to be connected to offer impact to 'multistate arrangements' and give a uniform lawful administration keeping in mind the end goal to encourage multistate exercises. (i.e business action); (iii) continually applying gathering law, supports discussion shopping which will make extra expenses for no less than one gathering.

It is in this manner not generally in the gathering's enthusiasm to apply it's inside law in any 'genuine clash' however the inquiry is when ought to the court offer impact to the outside law and its contention rules? In the event that the dismissal of renvoi forces issues than direction ought to be produced in which second referral is allowed. This will restrictively affect the force of the judges to utilize renvoi in a manipulative method to conceal their choices.

Right now we can see that renvoi is a critical system for accomplishing what Private International Law calls consistency of choice. Its significance can't be denied since it offers the judge a device to apply to the case it confronts, the same law and similarly as the court in the 'common gathering' would apply. Giving the way that both adversaries and defenders neglected to bring an undefeatable contention it doesn't imply that they are incorrect, yet simply that the hypothesis is inadequate.

As a matter of first importance, the precept of renvoi is material just in specific regions of law and there is a general acknowledgment for cases concerning title to land, title to moveable properties, formal legitimacy of marriage and certain parts of the progression. It has been watched that the basic guideline of every one of these territories is to accomplish consistency of result. Along these lines, if the extent of renvoi is to get

consistency this regions of law, which way to deal with renvoi ought to be embraced to further this degree?

On the off chance that the matter is drawn closer in a consistent, not just legal way we reason that any of the three arrangement displayed above would be unsuccessful to accomplish consistency.

As indicated by the 'crash hypothesis' if state An and B acknowledge the samerenvoi number than for every situation the courts in State A will apply an alternate law than the courts of nation B would apply and consistency would never be accomplished. For instance, 'if the regular renvoi number is even, the court of every nation will apply the law of the other nation' and if the 'number is odd, the courts of every nation will apply their own particular law.' Concluding that if every one of the states would concede to the same renvoi approach, the convention will act naturally crushing.

Interestingly, if two states receive an alternate renvoi number than the same law would be connected paying little respect to the court seised. For this situation, for the consistency to be accomplished, the capacity to locate a proper answer for the issue must be yielded. As indicated by the 'distinction hypothesis', the material law will depend 'exclusively on the lower of the two renvoi numbers'. 'In the event that the lower number is even, the law of the nation with the higher renvoi number will be connected, and if the lower number is odd, the law of the nation with the lower number will be connected.' Therefore, the pertinent law is controlled by the arbitrary reality that the lower number is odd or even.

One can plainly presume that the regulation of renvoi is fragmented, and a sensible arrangement can't be come to. Since any arrangement would lead either to the infringement of the guideline of consistency either to a uniform picked law ‘by a procedure not any more principled than a coin hurl’.

The most appropriate solution to reach uniformity seems to be the foreign court theory’ (double renvoi), which allows the court to decide in the same way as the foreign court would decide.[70] But as previously said this is useful only when no other country in the

[70]Elsabe Schoeman, ‘Renvoi: Throwing (and paradoxing) the boomerang – 25(1) The University of Queensland Law Journal 203, 211(2006).

world accepts it.[71]In spite, this is the solution argued to offer the future solution. But in order to avoid the 'mirror' problem there has been proposed for all the states to come together and negotiate a convention on secondary rules that can be applied when this situation appears.[72] Although, this is an ambitious plan for all the states to agree on secondary conflict rules, it is definitely more feasible than the solution of adopting uniform conflict rules at a universal level in order to avoid *renvoi*.[73]The international character of the rules would secure that multistate interests[74] are ascertained identically in any forum considering the issue.[75]In principle such rules should take into account the interest of both countries, and should be identical in all the countries, contrary they will create the exact same problem they are designed to solve, and should be able to deal with all kinds of *renvoi* including the case of transmission.[76]

In conclusion, since there is a general acceptance for the doctrine to be used in several areas of law there should be adopted a common approach in order for the expectations of the individuals to be respected. Logically, no existent approach could reach uniformity of outcome in those areas while being consistent with the most appropriate law. It is fair to say that the theory is incomplete and secondary rules should be adopted so as to make it applicable. While such a solution might in theory be appropriate, we cannot ignore its practical implications. This theory is based on the presumption that the foreign law will always be fully proved and the judge will be fully informed of the content and interpretation of the foreign law. One can be sceptical that this will in the end be possible. Also we have to take into account the public policy and the procedural law of the forum, which can impose further obstacles in the application of *renvoi*. However, notwithstanding these factors, the presented approach is, at present, the most appropriate way for the courts to reach a just and predictable solution in cases involving choice of law issues.

[71] Ernest G. Lorenzen, The Qualification, Classification, or Characterization Problem in the Conflict of Laws, 50 Yale Law Journal 743, 753 (1941)
[72]David Alexander Hughes, 'The Insolubility of Renvoi and its Consequences' 6(1) Journal of Private International Law 219 (2010)
[73]Hughes (n 62) 219.
[74]Kramer (n 68) 1029.
[75]Hughes (n 62) 218.
[76]Hughes (n 62) 219-221.

# Bibliography

## Website referred:


mauricewohl.info

www.lexology.com

sydney.edu.au

http://www.austlii.edu.au/au/journals/SydLRev/2004/13.html

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5533&context=fss_papers

Http://scholarship.law.upenn.edu/faculty_scholarship/649

http://digitalcommons.law.yale.edu/?utm_source=digitalcommons.law.yale.edu%2Ffss_papers%2F4522&utm_medium=PDF&utm_campaign=PDFCoverPages

http://legalrescue.blogspot.in/2013/01/the-significance-of-renvoi-to-private.html

http://www.pearse-trust.ie/blog/bid/110454/The-Rule-Of-Doctrine-Of-Renvoi-Explained

http://basilnet.awardspace.com/

http://www.academia.edu/4566983/THE_ADVANTAGES_AND_DISADVANTAGES_OF_RENVOI

http://www.ijssh.org/papers/196-G10028.pdf

www.jstor.org

digitalcommons.law.yale.edu

http://www.leagle.com/decision/1972944194NW2d750_1941/ISSENDORF%20v.%20OLSON

www.lawjournal.mcgill.ca

## Articles and Publications:


1. Renvoi: a dying doctrine by Jenny Bird
2. Abhishek Bharti, The concept of Renvoi in the Conflict of Law (June 2008)
3. Ernest G. Lorenzen, Renvoi Theory and the Application of Foreign Law: Renvoi in General, Yale Law School Legal Scholarship Repository, Faculty Scholarship Series (01.01.1910)
4. *Alexandru Gabriel,* An ambitious approach to *renvoi*
5. Ernest G. Lorenzen, Renvoi Theory and the Application of Foreign Law: Renvoi in Particular Classes of Cases, Yale Law School Legal Scholarship Repository, Faculty Scholarship Series (01.01.1910)
6. Roosevelt, Kermit III, "Resolving Renvoi: The Bewitchment of Our Intelligence by Means of Language" (2005). Faculty Scholarship Paper 649.
7. Thomas a. Cowan, Renvoi does not involve a logical fallacy (November 1938)
8. Robert Sharpe, The Multiple Uses of Renvoi in Rule and Interest Analysis-Based Choice-of-Law Regimes, Harvard Law School; University of Cambridge - Trinity Hall (June 27, 2010)
9. Varun Vaish, the renvoi theory, it's development, application to contractual choice of law and the way forward (2008-74)
10. Gray, Anthony (2007). The rise of Renvoi in Australia: creating the theoretical framework. University of New South Wales Law Journal, 30 (1). ISSN 0313-0096.
11. E. G. L., "Renvoi" in the Conflict of Laws, The Yale Law Journal Vol. 29, No. 2 pp. 214-218
12. Rhoda S. Barish, Comment: Renvoi and the Modern Approaches to Choice of Law, Vol. 30:1049
13. Berlingher Remus Daniel, The Renvoi in Private International Law, International Journal of Social Science and Humanity, Vol. 3, No. 1, January 2013
14. Stanley B. Stein, Choice of Law and the Doctrine of Renvoi

## Books referred:


1. John Pawley Bate, Notes on the doctrine of Renvoi in Private International law, Classic reprint series
2. Choice of Law and Conflict of Laws edited by Avigdor Victor Levontin