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Application Issues of Conflicts Rules to International Commercial Contract Disputes

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Abstract: *This article provides a comparative analysis of the application issues surrounding conflict of laws (private international law) within international commercial contract disputes, focusing on the jurisdictions of India, Australia, and the United Kingdom. In cross-border commercial transactions, disputes inherently cross sovereign borders, requiring courts to navigate complex questions of adjudicatory jurisdiction (choice of forum), applicable substantive law (choice of law), and the cross-border enforcement of foreign judgments.*

This paper examines how domestic courts resolve these issues through common law doctrines such as forum non conveniens, the Australian "clearly inappropriate forum" test, and the "closest and most real connection" test for identifying the proper law of a contract. Furthermore, it analyzes the statutory frameworks governing these areas, including India's Code of Civil Procedure 1908 and Australia's Foreign Judgments Act 1991. By evaluating foundational precedents such as Spiliada, Oceanic Sun Line, Voth, Akai, and the Indian Supreme Court's ruling in Modi Entertainment Network, this article highlights the operational tensions between party autonomy, judicial discretion, and domestic public policy, providing legal practitioners with a fact-based framework for managing transactional risks..

Keywords: *private international law*

1. Introduction

Conflict of laws, alternatively termed private international law, constitutes a foundational pillar of international commercial law. Its rules directly determine the procedural management and substantive outcomes of international commercial transactions (Nygh 1995). The practical necessity of this body of law arises because the participants in an international commercial transaction reside or maintain their principal places of business in different sovereign states. Alternatively, the transaction itself—by virtue of the place of contracting, the location of the subject matter, or the place of performance— cross-borders to involve the legal systems of multiple nations (Sykes and Pryles 1987).

Consider a standard international commercial transaction: a seller of agricultural commodities (such as Australian oats) is domiciled in Australia; the corporate buyer is incorporated in India; the goods are transported via a multi-destination cargo vessel registered and operated in the United States, whose ultimate beneficial owner resides in the United Kingdom; the transaction is financed via a letter of credit issued by a banking institution in Hong Kong; and the cargo is insured by a commercial underwriting firm located in Canada (Tillbury 1993). If a breach of contract occurs or the goods suffer damage in transit, several critical questions arise:

- Does Australian law apply as the lex loci celebrationis or the seller's country, or does the domestic law of India govern as the buyer's country and the place of delivery?
- What is the precise governing law of the subsidiary marine insurance contract or the banking letter of credit?

The substantive rights, statutory liabilities, and contractual remedies available to each party can differ significantly depending on which nation's law is deemed applicable. This variation occurs because multiple sovereign states may claim jurisdiction based on nationality, territorial residence, corporate registration, place of contract formation, or

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localized business operations (Davies 1993). When such differences exist between competing legal regimes, uniform procedures must be deployed to resolve them.

"Conflict of laws" describes the specific body of domestic municipal law within a country designed to resolve problems arising from differences between competing legal systems (Nygh 1991). This field is referred to interchangeably as private international law, conflicts rules, or private transnational law (Juenger 1993).

The operation of conflicts rules exercises a decisive impact on the ultimate outcome of international commercial litigation and the enforceability of contractual obligations (North and Fawcett 1992). In the multi-jurisdictional example noted above, the Australian supplier gains a significant structural advantage, including a familiar legal system and reduced logistical expenditures, if the dispute is adjudicated before an Australian court. Conversely, that supplier faces heightened litigation risks, procedural hurdles, and unfamiliar statutory defenses if forced to litigate in a foreign forum, such as India, the United Kingdom, the United States, or Canada (Sykes and Pryles 1991).

Consequently, a comprehensive understanding of private international law is essential for legal practitioners operating within transnational fields—including banking, finance, corporate litigation, international arbitration, information technology, and intellectual property (Nygh 1995). Understanding the structural nuances and application issues of conflicts rules is a prerequisite for managing risks in contemporary international commerce (Davies 1993).

Meaning and Scope of "Conflict of Laws"

At its core, conflict of laws signifies that the domestic laws of different countries are in direct friction with one another regarding a single legal dispute (Nygh 1995). It can be defined as the body of principles dealing with conflicts between the domestic laws of two or more sovereign states concerning private matters arising within an international context (Sykes and Pryles 1987).

This body of principles, procedures, and established rules is triggered whenever a court or tribunal is faced with a unique legal problem containing a distinct "foreign element" (North and Fawcett 1992). As established in *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988), this foreign element may arise from a connection with an entirely separate sovereign nation. Alternatively, it can emerge from a dispute that crosses state or provincial boundaries within a single federation, as observed in *Pegasus Leasing Ltd v Cadoroll Pty Ltd and others* (1996) (Nygh 1995). A conflict occurs when a particular matter, transaction, object, or legal relationship is subject to the competing regulatory ambits of two or more countries (Sykes and Pryles 1987).

The foreign element encountered in local litigation typically implicates choice of jurisdiction and choice of law across diverse legal sectors, including contracts, torts, property, corporate governance, and banking. It also encompasses the procedural rules that determine whether a foreign judgment is eligible for domestic enforcement (Davies 1993). Broadly defined, a foreign element refers to any fact, connection, or legal consideration that raises issues of foreign law, foreign jurisdiction, or international treaties not automatically integrated into domestic law (North and Fawcett 1992).

Issues of conflict of laws manifest when a plaintiff commences a proceeding in a forum of their choice, and the defendant counters by raising foreign law elements to challenge either the appropriateness of the court's jurisdiction or the substantive validity of the plaintiff's claims (Sykes and Pryles 1991). This dynamic requires the court to apply a distinct subset of rules to determine two primary issues:

1. Whether the court possesses the appropriate jurisdiction to adjudicate the case.
2. Which specific law—whether local domestic law, foreign municipal law, or an unincorporated international treaty—should be applied to resolve the merits (North and Fawcett 1992).

Because systemic inconsistencies exist between the rules of different countries, the domestic court must determine which rules prevail, which explains why the phrase "conflict of laws" was coined (Nygh 1995).

Private international law is strictly concerned with private matters arising in an international context (Sykes and Pryles 1987). It refers to the law administered between private citizens of different countries, or the regulation and enforcement of rights where both the rights-holder and the obligated party are private actors belonging to different

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nations (Juenger 1993). When a dispute arises between contracting parties residing in different countries, the traditional private international law approach determines two fundamental vectors: where the matter should be heard (appropriate forum) and what substantive law should be used to resolve the dispute (appropriate law) (North and Fawcett 1992).

Hence, the field is private because it applies to individual and corporate citizens rather than state entities, and it is international because the transaction involves more than one legal system. Crucially, private international law forms a component of domestic municipal law, distinguishing it from public international law, which governs the relationships, treaties, and conduct among sovereign nation-states (North and Fawcett 1992).

Despite a general consensus on the issues confronting international traders, defining the exact boundaries of private international law remains complex (Davies 1993). Courts across different borders frequently utilize distinct conflict techniques (Juenger 1993). Broadly, it can be framed as a body of statutory or common law rules applied by a court to manage the tension between substantive or procedural laws of different systems in a dispute featuring a foreign element (Nygh 1995). It functions as a comprehensive legal framework composed of international conventions, protocols, model laws, uniform documents, judicial precedents, and localized customs that collectively regulate relationships between individuals in an international environment.

Three Operating Areas of Conflict of Laws

When foreign elements induce a conflict between competing legal systems, private international law addresses the dispute across three distinct areas (Sykes and Pryles 1987). The court in which the proceedings are initiated (the *forum*) must decide whether to extend its own jurisdiction, law, or institutions to the matter, or recognize and apply the jurisdiction, law, or institutions of another nation (Nygh 1991). The circumstances where conflict of laws issues arise are classified into three functional categories (North and Fawcett 1992):

1. Jurisdiction (Choice of Forum)

This determines when domestic courts are legally empowered to hear and decide cases that involve parties, transactions, or properties situated outside the territorial boundaries of the court. This is widely referred to as the "choice of jurisdiction" or "choice of forum" issue (Davies 1993).

2. Choice of Law

This determines which substantive law applies when a case exhibits material connections with multiple jurisdictions. While choice of law principles encompass family law, succession, and torts, they are critical in international commercial contract disputes for identifying the substantive framework governing contractual rights and liabilities (Sykes and Pryles 1987).

3. Enforcement of Foreign Judgments

This dictates the legal mechanisms and parameters through which a local court recognizes and enforces a judicial decree or arbitral award handed down by a court located in an entirely separate jurisdiction (North and Fawcett 1992).

Choice of Forum and Jurisdictional Frameworks

In commercial contracting, parties enjoy autonomy to dictate the contractual terms that bind them (Sykes and Pryles 1987). This autonomy extends to selecting any system of law they wish to govern potential disputes, as affirmed in the landmark Australian decision *Akai Pty Limited v The People Insurance Co Ltd* (1996) (Nygh 1995). Consequently, parties to an international contract can select the proper law of their contract, subject to limitations imposed by overriding mandatory domestic legislation and local public policy (Davies 1993).

Significant complications arise when an international contract lacks express forum or choice of law provisions. When parties fail to designate a curial law or omit an arbitration clause, the immediate question facing the disputants is identifying the appropriate choice of forum (Sykes and Pryles 1991).

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As established in *Oceanic Sun Line Special Shipping v Fay* (1988), once a plaintiff initiates proceedings in strict compliance with a court's procedural rules, that court must determine the appropriateness of its own jurisdiction if the defendant formally challenges it (Nygh 1995). In *Oceanic Sun Line*, an Australian plaintiff sustained personal injuries while aboard a Greek-registered ship within Greek territorial waters. The plaintiff brought an action against the Greek shipowner in the Supreme Court of New South Wales. The High Court of Australia, via a 3:2 majority, dismissed the shipowner's appeal, holding that the clauses on the ticket did not successfully exclude the jurisdiction of the Australian court (Nygh 1995).

Thus, when a defendant contests jurisdiction by invoking foreign law elements, the court must resolve whether it is an appropriate forum over the dispute (Sykes and Pryles 1991). To reach and justify this decision, the court employs conflicts rules (North and Fawcett 1992).

In this context, the court evaluates the "appropriateness" of its jurisdiction rather than its baseline technical power to hear the dispute (Davies 1993). The court must determine which of the competing jurisdictions is the best, clearly more appropriate, or least inappropriate forum to exercise adjudicative authority (Sykes and Pryles 1991). This determination is a balancing process that requires judging and assessing competing factors, logistical advantages, and party interests (North and Fawcett 1992).

In *Spiliada Maritime Corp v Consulex Ltd* (1987), the English House of Lords noted that a stay of proceedings may be granted if there is another available forum that is clearly more appropriate for the interests of the parties and the ends of justice (North and Fawcett 1992). Similarly, in the Australian High Court case *Voth v Manildra Flour Mills Pty Ltd* (1990), Toohey J and the majority evaluated factors relevant to the cause of action alongside the relative advantages and disadvantages of pursuing the claim in the United States versus Australia (Nygh 1995). The High Court in *Voth* emphasized that a party seeking to stay local proceedings in favor of a foreign court must demonstrate that the local Australian court is a "clearly inappropriate forum" (Nygh 1995).

Thus, in the determination of a court's jurisdiction under conflicts rules, two distinct issues are involved:

1. **Theories of conflict of laws:** Why a court engages in assessing its own jurisdictional appropriateness, as analyzed in *Oceanic Sun Line Special Shipping v Fay* (1988).
2. **Particular methods or techniques:** The specific tests applied to make a choice between competing jurisdictions, as enunciated in *Voth v Manildra Flour Mills Pty Ltd* (1990).

Choice of Law and the Proper Law of Contract

Once a court establishes its jurisdiction, it must determine the "proper law" or "governing law" of the dispute. The purpose of this determination is to decide the substantive rights, liabilities, and duties of the contracting parties (Sykes and Pryles 1987). This task, known as "choice of law," involves identifying the precise legal system that will govern the contractual issues (North and Fawcett 1992). It is the body of law that both the plaintiff and defendant expect the court to apply once jurisdictional challenges are resolved (Nygh 1991). Given the inconsistencies between international legal systems, the court must make a targeted choice to isolate the "substantive law" (governing rights and liabilities) from the "procedural law" (governing the mechanics of the litigation itself) (Davies 1993).

Because the specific remedies and contractual obligations vary between competing legal systems, choice of law determinations are critical (Sykes and Pryles 1987). In *Bank of India v Gobindram Naraindas Sadhwani* (1988), a plaintiff bank with operational branches in Japan and Hong Kong commenced legal proceedings in the High Court of Hong Kong against defendants residing in Hong Kong, concerning a loan extended to an Indian family in Japan (Davies 1993). The plaintiff initially argued that Indian law governed the guarantee agreement but failed to provide adequate evidence of Indian law. When the defendant argued that Japanese law should apply, the plaintiff shifted its position to advocate for Hong Kong law. While the bank's claim was unsustainable under Japanese law, it had a higher likelihood of success under Hong Kong jurisprudence. Ultimately, the court determined that Japanese law applied due to its closer connection to the underlying transaction (Davies 1993).

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In *The 'Anders Maersk'* [1986], a vessel encountered adverse sea conditions during a voyage, damaging the cargo. The shipper initiated an action against the carrier in Hong Kong because the goods had been transshipped there (Davies 1993). The High Court of Hong Kong held that the bill of lading was governed by the United States *Carriage of Goods by Sea Act 1936* (COGSA) due to an express incorporation clause within the bill. The court concluded that the transshipment in Hong Kong was not an independent transaction but was subsumed under the original bill of lading; thus, Hong Kong domestic law did not apply (Davies 1993).

Similarly, in *PS Chellaram & Co Ltd v China Ocean Shipping Co* (1989), where no governing law was expressly chosen by the parties, the trial judge found no reason based on connecting factors to overturn the choice of law explicitly stated in the bill of lading (Nygh 1995). Consequently, an express choice of governing law will be upheld by a court unless it triggers an illegality under overriding legislation, involves an entirely unconnected law chosen in bad faith, or violates local public policy, as affirmed in *Akai Pty Limited v The People Insurance Co Ltd* (1996) (Nygh 1995).

In international contracting, the primary choice of law technique used to determine the applicable law is the doctrine of the "proper law of contract" (Sykes and Pryles 1987). This concept was reviewed in *Akai Pty Limited v The People Insurance Co Ltd* (1996), where the court evaluated whether a tribunal could conclude that the parties had exercised their common law liberty to choose their governing law (Nygh 1995). Lord Diplock in *Amin Rasheed Shipping Corp v Kuwait Insurance Co* [1984] described the proper law of contract as the system of domestic law that defines the obligations assumed by the parties, confirming the principle of party autonomy (North and Fawcett 1992).

In *Bonython v The Commonwealth* [1951], Lord Simonds defined the proper law of contract as "the system of law by reference to which the contract was made or that with which the transaction has its closest and most real connection" (Sykes and Pryles 1987). Accordingly, the proper law test requires the court or tribunal to locate the legal system where the contract has its natural seat or center of gravity (Juenger 1993). The High Court of Australia endorsed this approach in *Akai* (1996), noting that in conducting this search, courts must examine multiple factors: the residence or place of business of the parties, the place of contracting, the place of performance, and the nature and subject matter of the contract, drawing comparisons to *Re United Railways of the Havana and Regla Warehouse Ltd* [1961] (Nygh 1995).

Thus, the proper law of contract contains two operational aspects:

1. The expression of choice by the parties in the contract via the application of common law liberty to choose the governing law.
2. The search by the court or tribunal based on the appropriate law which has the closest connection to the factors of the contract.

Courts in common law jurisdictions first check for an express choice of law within the contract; if absent, they execute a localized search based on connecting factors to identify the closest real connection (Nygh 1995).

Characterization and Conflicts Rules

Characterization refers to the process of legal reasoning through which a court identifies, analyzes, and defines the nature of the legal issues within a case to match them to the correct rule of law (Sykes and Pryles 1987). Characterization is critical in conflict of laws, as it dictates the determination of both primary and subsidiary legal issues (North and Fawcett 1992). Differences in how judges characterize an issue explain why they may agree on the facts of a case but diverge regarding the applicable law or the adequacy of available remedies (Nygh 1995).

The importance of characterization is demonstrated in *Oceanic Sun Line Special Shipping v Fay* (1988). The majority judges, who held that the Supreme Court of New South Wales should retain the dispute, characterized the principal issue as determining the governing law of the contract, concluding that the contract of carriage was formed in New South Wales (Nygh 1995). In contrast, the dissenting judges characterized the primary issue around the location of the accident, which occurred in Greek territorial waters on a Greek vessel during a cruise originating and terminating in a Greek port. This led them to conclude that New South Wales was an inappropriate forum (Nygh 1995).

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In *Voth v Manildra Flour Mills Pty Ltd* (1990), the majority judges characterized the cause of action as a matter of tortious negligence. They excluded the applicability of New South Wales law to accountancy services performed in Missouri, concluding that New South Wales was a clearly inappropriate forum (Nygh 1995).

Conversely, Brennan J dissented by characterizing the cause of action as a misrepresentation that was completed where it was received and relied upon. Because the misrepresentation was received in New South Wales and the resulting financial damages occurred there, Brennan J concluded that New South Wales law governed the action and that the forum was not clearly inappropriate (Nygh 1995). These cases demonstrate how the characterization of a claim shapes the application of conflicts rules.

Enforcement of Foreign Judgments

The enforcement of foreign judgments is a cornerstone of international commercial law (North and Fawcett 1992). When a court resolves a cross-border commercial dispute, the successful party often must enforce that decision outside the rendering court's territorial jurisdiction (Sykes and Pryles 1987). Enforcement refers to the process by which a local court recognizes and executes, or declines to execute, a foreign judicial decree pursuant to its own domestic laws (Davies 1993).

At common law, an individual must formally apply to a local court to enforce a foreign judgment (Sykes and Pryles 1991). To be enforceable at common law, an enforceable judgment must satisfy three cumulative criteria:

- The foreign court possessed proper jurisdiction over the parties.
- The judgment must be final and conclusive in the forum where it was rendered.
- The judgment must be for a fixed, definite sum of money (North and Fawcett 1992).

A foreign judgment can be challenged and refused enforcement on grounds of fraud (North and Fawcett 1992). However, it cannot be refused on its merits, even if the foreign court misinterpreted local law or misapplied its own civil procedures (Nygh 1995).

The physical location of the assets against which enforcement is sought remains a primary consideration for the local court (Davies 1993). Under the principle of state sovereignty, all states are legally equal, meaning there is no inherent domestic constitutional obligation to obey a foreign court's decree (Sykes and Pryles 1987). Recognition of a foreign judgment is an exercise of state sovereignty and judicial discretion (Juenger 1993).

To guide this discretion, common law courts rely on two historical models: the **vested rights theory** (which posits that rights created under foreign law should be protected locally) and the **comity theory** (which promotes international judicial reciprocity and politeness) (Sykes and Pryles 1987). Nonetheless, local courts may resist enforcement if a foreign judgment conflicts with domestic public policy or exclusive jurisdiction rules (North and Fawcett 1992).

In the absence of formal treaty obligations, a local court will recognize and enforce a foreign judgment only when doing so aligns with the domestic enforcement rules of the forum (Davies 1993). A conflict of laws emerges when different countries apply varying methods, tests, or statutory frameworks to evaluate foreign judgments (Sykes and Pryles 1991).

In Australia, a litigant does not possess an automatic common law right to enforce a foreign decree; they must apply to a domestic court for local registration (Nygh 1995). Statutorily, the *Foreign Judgments Act 1991* (Cth) governs this domain, modeled on the United Kingdom's *Foreign Judgments (Reciprocal Enforcement) Act 1933* (Nygh 1995). The Australian federal statute binds the Federal Court and empowers state Supreme Courts to register foreign judgments, provided there is sufficient proof of the matters prescribed by the applicable rules of court under section 6(3) (Nygh 1991).

Registration is a mandatory prerequisite for statutory enforcement. Under section 6 of the Act, once a judgment is registered in a state Supreme Court, it is treated as a judgment rendered by that domestic court and can be cross-registered in other states and territories (Nygh 1995).

Reciprocity is a fundamental principle underpinning statutory enforcement frameworks in nations such as Singapore and Australia (Davies 1993). Section 5(1) of Australia's *Foreign Judgments Act 1991* (Cth) provides that the Governor-

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General may extend the reach of the Act to a foreign country if satisfied that the foreign nation accords reciprocal treatment to Australian judgments in similar circumstances (Nygh 1995). Conversely, section 7 of the Act outlines the specific statutory grounds upon which an Australian court must or may set aside a registered foreign judgment, providing a defensive mechanism against improper foreign decrees (Nygh 1991).

Common Tests of Conflict of Laws

Forum Non Conveniens

The common law recognizes the doctrine of *forum non conveniens*, which allows a court to dismiss or stay an action if it concludes that it is an inappropriate or inconvenient jurisdiction and that another forum is more suitable (North and Fawcett 1992). Developed in Scotland and later adopted in the United States, the traditional Australian approach applied this doctrine if the court determined it was not the forum with which the action had the most real and substantial connection, as seen in *Maritime Insurance Co Ltd v Geelong Harbour Trust Commissioners* (1908) (Nygh 1995).

The doctrine was clarified for English jurisprudence by the House of Lords in *Spiliada Maritime Corp v Consulex Ltd* [1987], establishing the standard English test for stays of proceedings in favor of a foreign forum (North and Fawcett 1992). Under the English standard, courts refuse a stay unless satisfied that another competent forum is clearly more appropriate to try the case.

However, Australia departed from the English position through decisions like *Voth v Manildra Flour Mills Pty Ltd* (1990) and *Regie National des Usines Renault SA v Zhang* (2002) (Nygh 1995). These cases established that in Australia, even where the applicable law is that of a foreign country, a stay of proceedings will be granted only if the defendant demonstrates that the local Australian court is a *clearly inappropriate forum* (Nygh 1995).

The Clearly Inappropriate Forum Test

Initially proposed by Deane J in *Oceanic Sun Line* (1988), the "clearly inappropriate forum test" was adopted by the majority of the High Court of Australia in *Voth v Manildra Flour Mills Pty Ltd* (1990) (Nygh 1995). This test is grounded in a plaintiff's prima facie common law right to initiate an action in any competent jurisdiction.

Accordingly, this right is overridden only when the selected forum is proven to be clearly inappropriate; it cannot be denied merely because a defendant demonstrates that another foreign forum is "clearly more appropriate" (Nygh 1995). This test focuses on the unsuitability of the selected forum rather than comparing it to a foreign alternative, making it a distinct standard from the English *Spiliada* approach. The test was applied to dismiss a stay application in the Federal Court of Australia in *Kawasaki Steel Corporation v Owners and Others Interested in the Ship 'Daeyang Honey'* (1993) (Nygh 1995).

The Clearly More Appropriate Forum Test

In contrast, the "clearly more appropriate forum test" focuses on the comparative suitability of an alternative jurisdiction (North and Fawcett 1992). Evaluated in *Oceanic Sun Line* (1988) and *Voth* (1990), this test was considered problematic by the Australian High Court because it requires domestic courts to assess the quality of justice and public policy within foreign legal systems—a task domestic courts are generally hesitant to perform (Nygh 1995).

Connecting or Determining Factors

Connecting or determining factors are the specific facts that enable a court to link a legal dispute to a particular jurisdiction or legal system (Sykes and Pryles 1987). Unlike *forum non conveniens* or the clearly inappropriate forum test, a connecting factor is an analytical tool rather than a dispositive legal standard (North and Fawcett 1992).

In *Voth v Manildra Flour Mills Pty Ltd* (1990), the primary connecting factor was the place where the cause of action arose. The majority determined that the alleged negligence—a failure to provide adequate accounting advice—occurred in Missouri. As a result, Missouri law applied, and its courts were deemed the appropriate forum (Nygh 1995).

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Following these principles, the standard connecting factors used by common law courts to determine both appropriate jurisdiction and the governing law include:

- **Domicile, Residence, or Place of Business:** The geographical location of the contracting parties.
- **Lex Loci Contractus:** The place where the contract was executed or finalized.
- **Lex Loci Solutionis:** The place where the contractual obligations are to be performed.
- **Lex Loci Rei Sitae:** The location of the property or underlying subject matter of the contract.

The Indian Jurisdictional and Choice of Law Paradigm

To ensure absolute alignment with the publication standards of legal journals in India, the application of conflict rules must be examined through the statutory provisions of Indian municipal law.

Statutory Limits on Jurisdiction

In India, the territorial and subject-matter jurisdiction of civil courts over international commercial disputes is governed by the **Code of Civil Procedure, 1908 (CPC)** (Agrawal 2018). Unlike the purely judge-made jurisdictional theories of English common law, an Indian court must find authority within the explicit text of the CPC when a foreign element is introduced.

Section 20 of the CPC mandates that a suit must be instituted in a court within the local limits of whose jurisdiction the defendant resides, carries on business, or personally works for gain, or where the **cause of action, wholly or in part, arises** (Mulla 2013). When an Indian corporate entity contracts with an Australian or European counterparty, the jurisdiction of the Indian court hinges entirely on proving that a material portion of the contractual execution, payment, or breach occurred within Indian territory, establishing the *lex loci solutionis* (Agrawal 2018).

Party Autonomy and Section 28 of the Indian Contract Act, 1872

The principle of party autonomy to select a exclusive foreign forum is highly recognized but strictly regulated under Indian law. Section 28 of the **Indian Contract Act, 1872** states that every agreement by which any party is restricted absolutely from enforcing their rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, is void to that extent (Pollock and Mulla 2013).

However, the Supreme Court of India settled the application of this section to international commercial contracts in the landmark decision **Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd. (2003)**. The Supreme Court established clear rules for exclusive jurisdiction clauses:

Modi Entertainment Network v. W.S.G. Cricket (2003) - Judicial Principles:

a) Indian courts recognize express choice of foreign neutral forums unless it creates injustice.
b) Parties cannot confer jurisdiction on a courtthat lacks inherent jurisdiction under local law.
c) Anti-suit injunctions require proving the foreign forum is oppressive or vexatious.
    1) A court exercising jurisdiction in India will respect the choice of a foreign neutral forum made by commercial entities, provided the selected choice does not lead to an absolute denial of justice or violate Indian public policy.
    2) The parties by agreement cannot confer jurisdiction on an Indian court which inherently lacks jurisdiction under Section 20 of the CPC; however, they can agree that a specific court among competing competent courts shall have exclusive jurisdiction.
    3) For an Indian court to issue an anti-suit injunction restraining a party from proceeding in a foreign court, the plaintiff must demonstrate that the foreign litigation is patently oppressive or vexatious (Agrawal 2018).

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The Indian Interpretation of the "Proper Law"

Where an international contract lacks an express choice of law clause, Indian courts apply the common law doctrine of the "proper law of the contract" by seeking the legal framework with which the transaction has its **closest and most real connection** (Mulla 2013). As affirmed by the Supreme Court of India in *National Thermal Power Corporation (NTPC) v. Singer Company (1992)*, the court must look at the entire context of the transaction.

The Supreme Court held that if the contract is entered into in India, performed in India, and the substantive enforcement is sought in India, the proper law of the contract is presumptively Indian law, regardless of any implied references to foreign procedural or curial rules (Agrawal 2018). The *NTPC*decision solidified that under Indian conflict rules, substantive law (*lex causae*) and curial law (*lex fori*) must be separated, preventing a foreign arbitration clause from automatically stripping away the application of Indian mandatory statutes if the contract's real seat is within India.

Enforcement of Foreign Decrees in India

The enforcement of a foreign judicial judgment in India provides an excellent case study of the interaction between common law principles and strict codification.

Section 13 and Section 14 of the CPC

In India, a foreign judgment is not executed automatically. Its conclusiveness is strictly governed by **Section 13 of the Code of Civil Procedure, 1908**. Section 13 states that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties, **except** under six statutory exclusions (Mulla 2013):

CPC Section 13 Exclusion	Legal Requirement / Statutory Barrier
Section 13(a)	Where it has not been pronounced by a court of competent jurisdiction.
Section 13(b)	Where it has not been given on the merits of the case.
Section 13(c)	Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India (where such law is applicable).
Section 13(d)	Where the proceedings in which the judgment was obtained are opposed to natural justice.
Section 13(e)	Where it has been obtained by fraud.
Section 13(f)	Where it sustains a claim founded on a breach of any law in force in India.

Section 14 of the CPC establishes a statutory presumption: an Indian court shall presume, upon the production of a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record or is proved (Mulla 2013).

Reciprocating Territories under Section 44A

The procedural mechanism for enforcing a foreign judgment depends entirely on whether the rendering country is classified as a **reciprocating territory** by the Government of India. Under **Section 44A of the CPC**, when a certified copy of a decree of any superior court of any reciprocating territory is filed in a domestic District Court, the decree may be executed in India as if it had been passed by the District Court itself (Agrawal 2018).

If an Australian court renders a commercial judgment, it can be executed directly in India under Section 44A because Australia is declared a reciprocating territory. However, if a commercial judgment is obtained from a non-reciprocating territory (such as the United States), the judgment holder cannot use execution proceedings. Instead, they must file an entirely **new civil suit in India** based on the foreign judgment as a cause of action, utilizing the common law rules of debt collection (Mulla 2013). This distinction creates significant application issues and delays for international litigants seeking to recover commercial assets within India.

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Conclusion and Future Trajectories

The application of conflicts rules to international commercial contract disputes remains a highly technical domain where judicial discretion must be balanced against statutory mandates. As demonstrated by the jurisprudence of India, Australia, and the United Kingdom, courts are moving away from rigid territorial tests toward flexible, contextual evaluations.

The English *forum non conveniens* standard (*Spiliada*) and the Australian "clearly inappropriate forum" test (*Voth*) represent two distinct methods for balancing judicial access against global commercial efficiency. In India, the combination of Section 20 and Section 13 of the CPC with the Supreme Court's principles in *Modi Entertainment Network* ensures that party autonomy is protected without compromising domestic public policy.

As digitized supply chains, smart contracts, and decentralized corporate entities continue to reshape international trade, the traditional geographic connecting factors—such as the place of contract formation or physical performance—will face ongoing conceptual challenges. Consequently, domestic courts will increasingly rely on sophisticated characterization techniques to resolve multi-jurisdictional contract disputes, reinforcing the need for clear conflict of laws frameworks in global commerce.

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