Conflict of Laws in Torts: A Theoretical Analysis of the Rule in Philips v Eyre in Nigeria*

Abstract

The misunderstanding of difference in the choice of law and choice of jurisdiction in conflict of laws in Nigeria has remained a major source of concerns for academic and legal practitioners especially in the area of law of torts. This lack of clear distinction in this area of law by Nigerian courts is borne out of the conception of the rule in Phillips v Eyre; the English law guiding principle on the difference between the two in tort actions as a rule of jurisdiction rather than that of choice of law. While choice of jurisdiction rule of Nigerian courts in matters having foreign elements is itself problematic, adding Phillips v Eyre as a jurisdiction rule has no doubt, further compounded the problem. The Nigerian courts have always treated the application of Philips as a choice of law instead of jurisdiction rule even at the level of the apex court. This paper presents a critique of this approach, and a criticism of this practice which has been adopted by the Nigerian courts that it results in a fair amount of uncertainty and unpredictability.Considering the federal nature of Nigeria, the paper recommends "no conflict theory"should be adopted by the Nigerian courts.

Keywords: Conflict Rules, No Conflict Theory, Proper Law of Torts, Philips v Eyre.

Introduction

One major problem facing the Nigeria courts as well as counsel is their inability to appreciate the distinction between choice of jurisdiction and choice of law in conflict of torts law. This problem has over the years affected the decisions of courts in Nigeria, including the apex court. This is an attempt to distinguish between a choice of jurisdiction question from a choice of law, using the previous decided cases of the Supreme Court.It is important to note that the first point a court needs to advert its mind to in respect of a matter with foreign elements (of whatever dimension) is the issue of jurisdiction. In other words, a court must, decide first, whether or not it has jurisdiction to hear a matter presented before it.In Nigeria, the common law writ rule subject to statutory modification is adopted in respect of jurisdiction issues[1] whilst the choice of law question becomes so much important when the parties are from states with different legal systems. Selwyn, LY. in the trial of the *Halley's*[2] case made the following sweeping statement of when he holds thus:

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[1] H.A. Olaniyan "Jurisdiction of Court in Causes with Foreign Elements" University of Lagos Press, Akoka, Lagos State.

[2] (1868) L.R. 2 P.C. 193, see also Philips *v.* Eyre (1870) L.R. 6 Q.B. 1 and Machado v. Fontes (1897)2 Q. B. 231.

> *While it is not being disputed that foreign municipal laws do not, by their own force, apply extra -territorially, it is, one imagines, precisely on that account that the rule of conflict of laws have been developed in each jurisdiction to indicate when foreign law should be applied.*[3]

At common law, physical power is the underlining basis of jurisdiction[4]. For the purpose of answering the question, actions are classified into *in per-sonam*[5] and in *rem action*[6] at law. This is premised on what has come to be known as the "writ rule" i.e. the presence of the defendant within the forum in an in personam action or the presence of the res in an in-rem action.Viscount J, in the case of *John Russel & Co. vCayzer Irvine & Co. Ltd*[7] explains the writ rule in the following words;

> *The root principle of the English law about jurisdiction is that judges stand in the place of the sovereign in whose name they administer justice and that therefore whoever is served with the king's writ and can be compelled consequently to submit to the decree, is a person over whom the courts have jurisdiction.*[8]

A Nigerian court in *Adams v Cape Industries Plc*[9] whilst subscribing to the common law position in the above case holds thus:

> *The voluntary presence of an individual in a foreign country whether permanent or temporary and whether or not accompany by residence is sufficient to give the court of that country territorial jurisdiction over him under our rules of private international law.*[10]

It is clear from the quotations above that jurisdiction at law is determined having regards to the presence of the defendant within the jurisdiction of the forum court. It therefore follows that

[3] I.O. Agbede "Themes on Conflict of Laws" Shaneson CI. Limited, p. 144.

[4]H A Olaniyan "Jurisdiction of Nigerian Courts in Causes with Foreign Elements" University of Lagos Press, Akoka, Lagos State p. 56, where he suggested that psychological as opposed to physical power was the underlining basis; that the English courts emphasized the consent of the defendant as the overriding basis for adjudication over him, and that in a sizeable number of the old U.S cases relied upon for the adoption of this practice in the US, the defendants were either not really transiently presently present in U.S or the cause of action was domestic or the defendants were non U.S residents aliens and it has been severally suggested that the transient rule may not be good enough for assuming jurisdiction over both U.S residents and non U.S residents aliens.

[5] An action is said to *be in personam* if the plaintiff seeks an order of the court compelling the defendant to fulfill or perform some obligations owe to the plaintiff even if the obligation relates to a *res*, H.A. Olaniyan op. cit., p. 58. See also *N.P.A. v Panalpina World Transport* (1974) U.I.L.R 89.

[6] An action is *in rem* only where the English Law and procedure fictionally confers personality on the res, and thus permits it to be served with the writ. See. H.A. Olaniyan op cit., p. 58.

[7] (1916)2 A.C 298, 302.

[8] Ibid.

[9] (1916) 5 A.C 300.

[10] Ibid.

where a defendant is served with a writ outside a court's jurisdiction, the court cannot exercise jurisdiction on him except he voluntarily submits to court".[11]

Forms of Voluntary Submission to Jurisdiction

Submission to a court's jurisdiction may take variety of ways, to wit: a plaintiff in a case is deemed to have submitted to the jurisdiction of a court in respect of any counter - claim in some related matters, which the defendant may make. Secondly, the defendant is deemed to have voluntarily submitted to a jurisdiction if he enters unconditional appearance and defends a matter on its merit[12].It is pertinent to note that, at the choice of jurisdiction stage, where the facts occur is irrelevant. Thus, the jurisdiction of a court depends on the service of the writ on the defendant within the natural forum[13] in accordance with the rules of court, or voluntary submission of the defendant to the jurisdiction of the forum court.[14]Having said that, the basis of jurisdiction at common law is presence or residence as the case may be. It is important to point out that the basis of jurisdiction in civil law countries is classified into two; vis: General Basis: this adopts the common law writ rule with statutory modification. Special Basis: this has regards to the nature of transaction between the parties. The old western Nigeria statute[15] adopts this position.[16]

There is no intention to go into the details of the basis of jurisdiction in this paper, but the writer deems it important to point out the civil law basis of jurisdiction as it relates to matters having foreign elements. It is when a court has been able to convince itself that it has jurisdiction that there is a question as to where the facts occur becomes relevant, a fortiori; it is the stage at which determination of the applicable law(s) becomes so germane. It is at this stage that a court bothers itself as to which of the potentially applicable laws should be applied to the facts of the case. Alas, Nigerian courts (including the apex court) have, most often than not, apply choice of law question to decline jurisdiction in a good number of cases bothering on conflict of torts law.[17]

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[11] Voluntary submission is the only exception to writ rule at common law.
[12] H.A Olaniyan op cit p. 64; See Owusu *v* Jackson &ors. (2003) PIQR 186; Spiliada Maritime Corporation *v* Cansulex (1987) AC 460.
[13]Agbede, p.150.
[14]Ibid.
[15] Section 22 (2) High Court Law of Western Nigerian.
[16] The High Court Law of Eastern Nigeria adopts an identical position with the US. Section 22 (2) of the High Court Law of Eastern Nigeria classified actions into contractual and non — contractual for the purpose of jurisdiction.
[17] See the cases of *Amanambu v. Okafor* (1966) 1 All N.L.R. 205; Dairo *v* UBN Plc. (2007) 16 NWLR (pt.1059) 99 discussed later in this paper

Choice of Law: Common Law Position - Rule in Phillips *v* Eyre

The court in the case of *Phillips v Eyre*[18] formulates the common law rule, which has continued to influence the shape of the current legislation. The rule is formulated in a celebrated dictum of Willes J. thus:

> *"As a general rule, in order to found a suit in England for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in England. Secondly, the act must not have been justifiable by the law of the place where it was done".*

The above rule is known as a rule of "double actionability."[19] Its first limb is that a claim brought in England on a tort committed abroad fails, unless the conduct complained of is actionable as a tort by English domestic law. Its second limb is that the claim also fails if there are no civil liability under the law of the place of the tort as between the actual parties to the litigation.

It is the first limb, the application of the *lex fori*, which is the distinctive feature of the rule. Its survival for over a century is one of the oddities of English legal history. Nowhere else in the English conflict of laws does a claimant have to surmount a double hurdle and shows that a claim is valid not only by the appropriate foreign law but also by the English domestic law.[20] The requirement effectively closes the door of the English Court to every action tort not recognized by English domestic law, even when the only connection with England is that the defendant had moved there after the tort was committed. It was roundly criticized over the years by academic commentators.[21]The only authority cited by Willes J. in formulating it is the case of *Halley,*[22] a decision of the Privy Council in an admiralty appeal. Yet, when the House of Lords have an opportunity to consider the matter in *Boys v Chaplin,*[23] they express unanimous approval of this aspect of the rule, despite Lord Wilberforce's concession that the rule "bears a parochial appearance"; that it rests on no secure doctrinal principle; that outside the world of the English-

[18] (1870) L.R. 6 QB. 1, 28-29
[19] Also referred to as the "double liability rule". See the case of Benson *v* Ashiru (1967) N.M.L.R 363.Unfortunately, the court applied the rule as a choice of jurisdiction as opposed a choice of law rule.
[20] Morris "The Conflict of Laws" Sweet & Maxwell Ltd. 2005, London, p. 372.
[21] For example, Loreuzeu, selected articles on the Conflict of Laws (Yale University press, New haven 1947) p. 376.
[22] (supra).
[23] (1971) AC. 356.

speaking common law it is hardly to be found".[24] The House of Lords shows not only an obstinate conservatism on this point, but a predilection for the sole application of English law; whatever the tort and wherever committed.[25]

The second limb of the rule referring to the law of the place of the tort, is relatively uncontroversial. Its effect can be seen from the fact of *Phillips v Eyre*[26] where an action for assault and false imprisonment is brought in England on the basis of events in Jamaica said to be the responsibility of the defendant, who was Governor of Jamaica. The defendant pleads that the acts complained of are done by him in the course of suppressing a rebellion which has broken out, and that his acts were subsequently declared lawful by an Act of indemnity passed by the Island legislature. The Court of Exchequer chamber holds that as the actions of the defendant are not legally wrongful in the law of Jamaica, there is no liability in the law of the place of the tort and so the action fails. After the speeches of the law Lords in *Boys v Chaplin,*[27]it is clear that the second limits would be satisfied if there are civil liability between the parties in the law of the place of the tort. There is no requirement that the defendants conduct be classified as tortuous by the foreign law. It is sufficient by that law the defendant's liability to pay damages is contractual, quasi contractual, proprietary or *sui-generis*.[28]

It is important to note that the general rule expounded in *Phillips v Eyre*[29] case is made subject to exceptions propounded in the case of *Boys v Chaplin*. It might be departed from where the facts of the case so required. Lord Wilberforce begins with what he describes as a well understood rule covering the majority of normal cases, but he sees the desirability of making the rule flexible enough to take account of varying interests and considerations of policy presented by the presence of particular foreign elements. A particular issue might be governed by the law of the country, with respect to that issue, that has the most significant relationship with the occurrence and the parties.[30] It is important to segregate the relevant issue and to consider whether in relation

[24] Morris Op Cit p.387.
[25] Mc Gregor (1970) 33 M.L.R. 1,5.
[26] Supra.
[27] Supra.
[28] Lord Hodson at p. 377.
[29] Supra.
[30] Lord Hodson at p.380, per Lord Wilberforce at p.390-392.

to that issue, the general rule ought to be applied or whether, "on clear and satisfactory grounds," it should be departed from.

In *Boys v Chaplin*[31] such grounds are held to exist because both parties were normally resident in England and only temporarily present in Malta. If both parties or only the defendant had been Maltese, the decision would have been different[32]. If the issue had been whether the defendant is absolutely liable or liable only for negligence, the case for applying Maltese law would have been much stronger. The outcome in *Boys v Chaplin* is the *application* of the *law* of the *forum*, but the exception to the general rule was not in terms limited to cases where it would result in the application of that law[33].The Privy Council in *Red Sea Insurance Co. Ltd v Bouygues S.A*[34] applies the decision in *Pearle v Ove Arup Partnership Ltd*[35] where B is involved in a project for the construction of university buildings in Saudi Arabia for the government of that country. When structural faults were discovered in the building, B began proceedings in Hong Kong against R, an insurance company incorporated in Hong Kong but having its head office in Saudi Arabia.

The relevant issue in the case concerned a counter-claim by R alleging negligence by B in supplying faulty precast units for use in the buildings. That claim rests solely on the law of Saudi Arabia, as the law of the place of the tort, and R is unable to sue under the law of Hong Kong, the *lex fori*. For that reason, the claim was rejected by the Hong Kong Court of Appeal. The Privy Council allows the appeal: it is appropriate on the facts to depart from the double actionability rule and apply exclusively the law of the place of the tort. If approved, a formulation of the exception created by *Boys v Chaplin* [36] that "*a particular issue between the parties may be governed by the law of the country which, with respect to that issue has the most significant relationship with the occurrence and the parties".* According to Dicey & Morris' this is regarded as expressing the effect of Lord Wilberforce's speech in *Boys v Chaplin,* and the Privy Council endorsed the principle of flexibility he had propounded. In some instances, the

[31] Supra.
[32] 32 Per Lord Hodson at p. 379; per Lord Wilberforce at p. 389-392.
[33] Morris Op cit. at p. 374.
[34] (1995) 1. A. C. 190.
[35] (2000) ch.403.
[36] Dicey and Morris (12th edn. 1993) pp 1487-1488.

exception could be used as in the Red Sea Insurance case itself, to cover the whole case and not just (as in *Boys v Chaplin*) an isolated issue.

Choice of Jurisdiction and of Law in Nigeria—Cases of same Law.

This section examines the attitude of the Nigeria courts in cases with foreign elements, pointing out the relevance of the uniform adoption of common law rules on torts. Conflict of laws is said to arise whenever a court is asked to determine a civil dispute which throws up foreign elements[37]. It should be noted that conflict of laws in a unitary state manifest only at the international level. It however manifests in 3 major dimension in a federation like Nigeria: International Dimension, Inter - State Dimension, and Inter - Local Dimension. This section essentially focuses on inter - state dimension of conflict of laws and the U.S.A and Nigeria shall be used as a case study. This is more so in sense that there's no inter-state conflict of tort laws in England. In a federation like Nigeria each of the constituent states is a country for the purpose of conflict of law if it has competence to make law on the subject matter.[38] The author of Morris[39] on Conflict of Laws explains how and when the inter-state dimension of conflict of laws could arise in a federation thus:

> *More generally, a state in the political sense, or as understood in the public international law, may or may not coincide with a country (or 'law district' as it is sometimes called) in the sense of the conflict of laws. Unitary States… where the law is the same throughout the state, are "countries" in the sense… each a country in the sense of the conflict of laws, because each has a separate system of law".*[40]

In Nigeria, most of the sensitive subject areas are contained in the exclusive legislative list for the federal government. Aside from that, states within the federation also uniformly adopt the common law on tort as well as its conflict rule. It must be noted however that uniformity of decisions is not guaranteed by identical internal laws alone, where conflict rules differ[41]. Nigeria adopts the common law principle in respect of tort and uniformly adopts its conflict of laws rules. It therefore becomes worrisome whether there's really conflict of law in Nigeria as the

[37] H.A. Olaniyan "Choice of Law in the Nigerian Interstate Conflict of Tort Law: Much Ado About Nothing" Nigeria Institute of Advance Legal Studies Journal of Law and Public Policy Vol.2 at p. 63
[38] Morris op cit. at 375.
[39] Cited by H A. Olaniyan ibid.
[40] Morris John The Conflict of Laws, (6th edn: London; Sweet & Maxwell 2005) 3.
[41] Olaniyan, p. 64.

case with the USA where states enact separate tort laws[42]and adopts different choice of law rules.The above becomes more important where internal laws and choice of law rules are the same in all the states of a federation and the existence of a long arm statute which exhaustively governs inter-state jurisdiction and enforcement of sister state's judgment.

The Nigeria Inter - State Conflict of Tort Law – A Judicial Review

A critical analysis of conflict of tort law cases in Nigeria would show that there's practically no conflict in the Nigeria tort law as with some other federations where states have gone their separate ways in enacting laws to regulate tortuous liabi1ities Perhaps, that is why an erudite writer has suggested the "theory of no conflict" in Nigeria, to which the writer of this paper fully subscribes.[43]

We have earlier mentioned the questions conflict of laws seeks to answer and it's very important to state at this juncture that each of these questions is independent of the other. Unfortunately, Nigeria courts have treated these separate questions as if the answer to one automatically resolves the other.

The basis for conflict of laws lies in the recognition of the fact that there are instances, where cases are instituted at different venues from where the facts occur.[44] Thus, failure of the Nigerian courts to acknowledge that fact has been the reason for their confusing decisions in cases with inter-state dimension of conflict of laws.[45]The court in *Dairo v U.B.N. Plc*[46] simply assumes without convincing proof that the only place where actions could have been instituted is the state where the facts occur.[47] With due respect to the apex court, there would have been no need for conflict of laws as a course, if the position of the apex court were right. In fact, the same apex court in the case of *Benson v Ashiru*[48] acknowledges the fact that a suit may be instituted outside the state where the facts occur.[49] The Ashiru's case also, unconsciously, supports the "no conflict

[42] Ibid.
[43] Ibid.
[44]*Benson v Ashiru* (1967) NMLR 363where the Supreme Court, while applying the doctrine of double actionability, acknowledges the fact that a case may be instituted at a venue, other than where the facts occurred. See also *Philips V. Eyre*.
[45] See *Amanambu v Okafor* (1966) 1 All N.L.R. 205; *Dairo v UBN Plc.* [2007] 16 NWLR (pt. 1059) 99.
[46] Ibid.
[47] See also the case of *Agunanne v NTC* (1979) F.N.L.R. 243.
[48] supra
[49] Unfortunately, the Supreme Court did not overrule itself in the case of *Benson v Ashiru,* hence, confusion arising from the need to decide which of the conflicting decisions of the apex court should be followed.

theory" suggested by the writer in that the court, in that case, there is an allusion to the fact that application of either state law would have no different effect on the outcome of the case. We have earlier submitted that the apex court had proceeded on a wrong assumption that the only place where an action could be commenced is where the facts occur. This is portrayed in the Maxim *Lex loci delicti comissi*.

Support for the law of the Place of Tort

In the course of twentieth century, most legal systems develop conflicts rules which apply, or at least give pride of place to the law of the place of the tort, the *lex loci deliciti*. In 1994, a survey by the Law Commission shows that the law of the place of an action is the primary choice of law rule in almost all European countries, though the notion of the "place of tort" is differently expressed and some countries[50] allow the application of another law if that is more favorable to the injured party.[51]In the nineteenth century, some writers, notably Savigny,[52] have argued for the application of the *lex fori*, the law of the court seized of the case.

English common law gives some weight to the *lex fori*, but except in countries which still follow the unreformed English doctrine, the use of the lex fori has been abandoned as impractical and unjust.[53]The learned author states the rationale for the adoption of *lex loci delicti* in the following words: *The adoption of the law of the place of the tort as the prevailing doctrine reflected in part ideas as to the "territoriality" of law.*[54]Our position is that territorial limitation does not negate the application by the forum court of its *lex fori or lex loci delicti commissi,* where appropriate. The peculiar Nigerian situation which has also been strengthened by the provision of the Evidence Act as well as the long arm statute has rendered the territoriality doctrine insignificant in the Nigerian inter-state conflict of torts law.

[50] Notably Germany and Hungary
[51] I.O. Morris Op cit. at p.368.
[52]System des heutigenroemische Rechts (1849), vol.8, p 275.
[53] See the decision of the Canadian Supreme Court in *Tolofson v Jensen* (1995) 120 D.L.R. (4th) 289 applying the law of the place of the tort as an invariable rule, and those of the High Court of Australia in *Pfeiffer Pty Ltd v Rogarson* (2000) 172 ALR 625, noted Osbourne [2002] C.L.J 537 (adopting the same approach in an intra. Australian context) and Regie National des Usines Renault SA *v* Zhang [20021 187 ALR 1, noted smout (2002) 118 L.Q.R 512 (reserving the issue in international cases).
[54] Morris op cit. at 368.

It seems natural to many lawyers to argue that the law of the place where events occur is the only law that can attribute legal consequences to them, an argument which, according to Morris[55], has been seen to flow from the long- abandoned "vested rights" theory.[56]In what is for a century the leading English case, Willies J. pay lip-service to this argument when he says that "the civil liability arising out of a wrong derives its birth from the law of the place, and its character is determined by that law".[57]A more pragmatic argument in favor of applying the law of the place of the tort is that it usually accords with the legitimate expectation of the parties.[58] The argument neglects the fact that where the tort occurs might in itself be fortuitous. In addition, the peculiar situation of Nigeria is designed in such a way that territorial boundary or barriers has been removed by the long arm statute.[59]Morris notes that a mechanical application of the law of the place of tort regardless of the domicile and residence of the tortfeasor and the victim, and regardless of the type of issue and the type of tort involved, may lead to results which seem wholly inappropriate.[60]

A good number of Nigeria cases that have been decided by the Supreme Court display an unwavering support for the lex loci delicti commissi rule — the law of the place of torts. For instance; the case of *Amnambu v Okafor and Anor*[61] the plaintiff sues the defendants in Eastern Nigeria in respect of a fatal accident and death that occurred in Northern Nigeria. The defendants objects to the jurisdiction of the court. Consequently, the plaintiff obtains an order to amend the writ to read that it is brought under the Fatal Accident Law of Eastern Nigeria. When the matter comes up for trial before another judge the defendants objected that the order to amend is invalid since the claim is brought under the law of the Northern Nigeria. The defendants' objection is upheld by the judge who rules that the order to amend is a nullity and the court has no jurisdiction on the claim as originally brought. On appeal by the plaintiff, the Supreme Court rightly dismisses the review by the second judge of the order of amendment granted by the first.

[55] ibid
[56] See Holmes J. in Slater v. Mexican National Ry. (1904) 194 U.s 120 and Western Union telegraph Co. *v* Brow (1914) 234 U.S 542, 547 cf. Cardozo J. in Lauk *v* Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 196, 200 (1918) "A tort committed in one state creates a right of action that may be sued upon in another unless public policy forbids".
[57]*Phillips v Eyre* (1870) L.R. 6 Q.B.1, 28.
[58] An argument accepted in the High Court of Australia in Pfeiffer Pty Ltd *v* Rogerson (2000) 172 ALR 625, 645.
[59] The relevant provision of the Sheriff and Civil Process Act 1958. Sections 95-103.
[60] Morris Op cit p. 369.
[61]Supra.

It however held that an action could not be maintained under the Eastern Nigeria Law for an accident that occurs outside Eastern Nigeria. The court then reasons that if the claim had been left in its original form as being brought under the Fatal Accident Act applicable in the Northern Nigeria, it would have had the opportunity of considering whether it could have been brought in the High Court of Eastern Nigeria or not. In other words, the Supreme Court dismisses the suit simply because the plaintiff has pleaded what it thinks is the wrong law, that is the *lex fori* and suggested that it is the *lex loci delicti commissi* that could apply even if the action could be instituted at the forum. With due respect to the apex court, the writer herein feels strongly that the apparent errors in the subsequent cases[62] would have been saved if the apex court had pronounced on whether the action could be instituted at a forum other than the place of tort.

The apex court's decision in the above case clearly demonstrates the court's ignorance of and its inability to appreciate the distinction between a choice of jurisdiction question and a choice of law question[63]. The case though raises a choice of jurisdiction issue; it was wrongly dismissed on the assumption that what was submitted before it was a purely choice of law question. The Supreme Court's failure to pronounce on whether or not an action can be instituted outside the place of tort is deliberate in so far as the plaintiff's case was dismissed in that case on the ground that the applicable sister — state law is not expressly pleaded. It is pertinent to note that under the received English law, the statute of Eastern Nigeria, as opposed to that of Northern Nigerian, would have been applied in the case given the court decision in *Boys v Chaplin.*[64]

Again the apex court fails to advert its mind to the choice of law rules in the English court's decision in *Phillips v Eyre*[65] as to discover that tort committed in one state could be litigated upon in another state, and that there is nothing in law preventing the application by the forum court of the foreign law in appropriate cases. Assuming without conceding that what is submitted before the court is a choice of law question, the provision of Section 74 (1) (a) Evidence Act[66] which requires a state High Court to take judicial notice of the laws in other states of the

[62] Dairo*v* UBN (supra).
[63] H.A. Olaniyan points out in his article titled *Choice of Law in the Nigerian Interstate Conflict of Torts Law; Much Ado About Nothing* NIALS Journal of Law and Public Policy Vol. 2 at page 66, that the answer to the first question does not usually dispose of the need to ask the second question as the governing law need not be the forum law.
[64] (Supra).
[65] (1970) L.R. 6 QB 1 at pp 28 -29.
[66] Evidence Act 2011, Laws of Federation of Nigeria.

federation would have still rendered the decision *per in curiam,* and the decision could not still have been justified.

Barely a year after the decision in the above case, the Supreme Court was faced with a similar situation in the case of *Benson v Ashiru*[67] where the Supreme Court adopted the double liability rule, though as a choice of jurisdiction as against a choice of law rule. The facts of the case are that the plaintiff, a descendant of a victim of an automobile accident which occurs in Western Nigeria, successfully brings an action under the Federal Fatal Accident Act in the Lagos High Court against the defendants. On appeal to the Supreme Court, the defendant/Appellants-driver and owner of the vehicle - contended, inter alia, that an action could not be brought under the Lagos State law where the injury and the death occurs in the Western Nigeria. The defence is based on the decision in *Amanambu's* case. Counsel for the respondent seeks leave to amend the statement of claim so as to base the action on the statute of Western Nigeria. While rejecting the defence, the apex court holds thus,

> *As a general rule, foreign law is a question of fact and must be pleaded, but section 73 (1) (a) of the Evidence Act requires the High Court of Lagos to take judicial notice of "all laws and enactments and any subsidiary legislation made there under having the force of law or heretofore in force or hereafter to be in force in any part of Nigeria and it is unnecessary to plead matters of which the court take judicial notice... it appears from Koop V. Bebb that the courts in the different state of Australia similarly were unanimous in rejecting a submission that the plaintiffs were debarred from relying on the law of the state where the wrong took place by the fact that they had not pleaded it in their statement of claims.*[68]

Again, the apex court's decision in the above case is founded on the reason solely that the law of the place of tort is the same as the law of the place of action. This again shows the court's readiness to apply the *lex loci delicti commissi.*[69]

It is pertinent to note that the two decisions are prone to being criticized. However, it is important to figure out which of these conflicting decisions represents the current position of

[67] (1967) NMLR 363.
[68] Amanambu's case supra at 206.
[69] The High Court of Lagos State in the case of *Uko v WAPCO* (1973) 9 CCHJ 11 also followed the reasoning of the S.C. in Benson v. Ashiru (supra).

law. While the decision in *Amanambu's* case is consistent with the *lex loci delicti commissi* approach even though with clear demonstration of lack of understanding of the conflict problems involved, the Ashiru's case adopts the concurrent liability to apply the *lex fori*. By all accounts, the decision in the former case is irreconcilable with the decision in the latter,[70] and the Supreme Court failure to explain the discrepancies in the two decisions is rather unfortunate even as we reluctantly state that the *Ashiru's* case represents the current position of law.

The failure of the Supreme Court to overrule itself is rather absurd and the conflicting decisions in the two leading cases[71] in Nigeria remain irreconcilable: leading to confusions in the subsequent cases in which those conflicting decisions were cited. As regards the choice of law question in the two cases analysed above, the Supreme Court applied *lex loci delicti commissi* in *Amanambu* while the concurrent "double liability" was applied in *Ashiru's* case. What is clear from the analysis of the two cases is that the failure of the Supreme Court to pronounce on any of its two inconsistent decisions when it has ample opportunity to do so has contributed in no small measure to the confusion now besetting the lower courts.[72] Despite the confused state of the law, it is suggested that on principle and on authority, the decision of the Supreme Court in *Amanauibu's* case appears unsupportable. Consequently, the current rule of choice of law in the field of tort law is the rule in *Ashiru's case*.

The High Court of East Central State, per Ikwechegh, in the case of *Ubanwa & 4 Others v Afocha & University of Nigeria*[73] is right to have found jurisdiction on *section 22* (2) High Court Law of East Central State and its application of the Fatal Accident Law of Northern Nigeria pursuant to *section 73* (1) (a) (now section 74 (1)(a) of the Evidence Act. Unfortunately, the court becomes confused when it cites the double liability rule in *Benson v Ashiru* as a choice of jurisdiction rule while the *lex loci delicti commissi* applies to determine liability. The Supreme Court again considers the law of the place of tort sacrosanct in *Agunamme v N.T.C*[74] as to sacrifice the law with the most significant connection with the case. The court believes since the

[70] Conflict of Laws in Nigeria concise text by I.O. Agbede, Department of Jurisprudence and International Law, Faculty of Law, University of Lagos.
[71] *Amanambu v Okafor* (Supra) and *Benson v. Ashiru* (supra).
[72] See *Agunanne v N.T.C Ltd* (supra) where the decision in *Utanwa's case* was followed.
[73] (1979) E.C.S. L.R. 308.
[74] (1979) F.N.L.R. 243.

accident occurred in the North, the Northern law is the only applicable law in that regard. The court never addressed its mind to the fact that where the facts occur might be fortuitous. The case showed clearly that aside the occurrence of the facts in the Northern Nigeria, the North has no interest whatsoever in the case. Thus, if the court had appreciated the distinction between the choice of jurisdiction & that of law, it would have applied the Eastern Nigeria law.

Support for the law of the Place of Action

It is pertinent to note that the court's approach to inter-state conflict of torts law is rather confusing. This is more so in the sense that the Nigerian courts (including the apex court) have applied *lex loci delicti commissi* in some cases whilst *lex fori* has been applied in some other cases, thereby laying confusing and conflicting precedents for subsequent cases. It should be noted further that the *lex fori* has been applied in the context of double liability[75] to resolve question of jurisdiction. The principle enjoins the court to apply the law of the place of action if the law of the place of tort does not excuse or justify the defendant's conduct. It is however absurd to see the Nigerian Courts applying *lex fori* on the assumption that it is the same as the law of the place of tort. With due respect to the courts, the double liability doctrine does not make it a condition for the application of forum law that it must be the same as the law of the place of tort.[76] The conditions for the application of forum law are: the wrong must be actionable if committed within the forum and the wrong is not excusable or justifiable under the law of place of tort.

In England however, the proper law of tort has been propounded in respect of cases with foreign elements. The English court in *M'Elroy v M'Allister*[77] applies the Scottish law even though the tort occurs in England. The facts of the case are that, a Scots man employed by a Scottish firm negligently driving his employer's lorry, and causes the death of another Scotsman employed by the same firm who is a passenger in the lorry, thus commits a tort under both English and Scots law. Whilst commenting on the above case *Morris* in *1949* suggests that tort liability should be governed by *"the proper law of the tort"*; the law of the country with which the tort has its

[75] Double liability also refers to as double actionability is propounded by the English court in *Phillips v Eyre* and approved by the Supreme Court in the case of *Benson v Ashiru.*

[76] H.A. Olaniyan points out in his article titled *Choice of Law in the Nigerian Interstate Conflict of Torts Law; Much Ado About Nothing* published in the NIALS Journal of Law and Public Policy Vol. 2 at 72.

[77] 1949 S.C. 110.

closest and most real connection. It is suggested that a proper law approach, which has been used with great success in the field of contract, would if intelligently applied furnish a much needed flexibility and enable different issues to be segregated, thus allowing a more adequate analysis of the social factors involved.[78]

The Proper Law of Tort

The proper law thesis can take a stronger or a weaker form. The stronger version places emphasis on the virtue of flexibility and argues that the primary choice of law rule should be that of the proper law. A court following that approach starts with a blank sheet of paper and examines the factors connecting the tort to particular countries without reference to any presumption giving priority to any one factor.[79]The stronger form of the proper law thesis is adopted by the American Law Institutes Restatement Second of the Conflict of Laws. The leading section on torts provides that "the rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, as to that issue has the most significant relationship to the occurrence and the parties".[80]

The factors to be taken into account in determining this most significant relationship are listed as follows: the place where the injury occur; the place where the conduct causing the injury occur, the domicile, nationality, place of incorporation and place of business of the parties and the place where the relationship, if any, between the parties is centered. On the other hand, the stronger form of proper law doctrine has been criticized by some because it sacrifices the advantages of certainty, predictability and uniformity of result which are claimed to follow from the application of the law of the place of tort. It is also said that the analogy from contract is not useful because the parties to a contract can avoid uncertainty by choosing the proper law,[81] whereas liability in tort is usually unexpected: road accidents are by definition never planned.

The balance of arguments may favour the *weaker form of the proper law thesis.* This accepts the value of having a clear rule such as the application of the law of the place of tort, to be applied in

[78] Morris Op cit. p. 370.
[79] An analogy would be the application in a contract case of Art.4 (1) of the Rome convention without reference to the presumption in Art.4(2).
[80] Section 145 Restatement.
[81] *Boys v Chaplin* [1971] A.C. 356 per Lord Hodson at pp 377-378; per Lord Wilberforce at p.391.

the majority, and perhaps the great majority of cases. But it also stresses the value of flexibility; where a proper law analysis identifies another law with which the tort (or some issue in a tort case) is much more closely connected. It should be possible for a court to apply that other law,[82]

Where laws are the Same - No Conflict Theory

It has been said earlier that the choice of jurisdiction and choice of law are independent of each other and to be determined at different point in time by the court before whom a matter is instituted.

It is to be remembered that one of the conditions for application of a foreign law is the requirement to plead and prove same by the party seeking to rely on it. Thus, failure to plead and prove the foreign law means that the forum law applies.[83]In the inter-state situation, the courts are empowered to take judicial notice of sister state laws, but this cannot mean that the court should dispense with pleading of the law. Therefore, if a counsel pleads forum law, the opposing counsel who prefers another state law, needs not only to plead it, he needs also to convince the judge first, that the sister state law is different in effect from the forum law and that by the choice of law rule of the forum, the sister state law is applicable.[84]

It should be noted that the problem of interstate conflict of laws in Nigeria is not as pronounced as it is in some other federation, especially the United States of America for the following reasons:

i. many subject areas of civil and commercial law, such as bankruptcy and insolvency banking, bills of exchange and promissory notes, carriage of goods and passenger by air, copyright, patents and trademarks, incorporation and winding up of companies, insurance, trade unions and industrial relations[85] and so forth, fall into exclusive legislative list and are therefore legislated upon by the federal government;

[82] The English law has now adopted an approach of this type.

[83]Macmillian Inc *v* Bishopsgate investment Trust plc (no 3) (1995) 1WLR 978. see also Funduk Engineering ltd *v* James Mac Arthur (1995)4 NWLR (pt.392).

[84] H.A. Olaniyan pointed out in his article titled *Choice of law in the Nigerian Interstate Conflict of Torts Law; Much Ado About Nothing* published in the NIALS Journal of Law and Public Policy Vol. 2 at page 73.

[85] Items 3,5,6,13,32,33,34, & 43 of the Exclusive Legislative List, Part, 2nd Schedule together with section 4 of the constitution of the Federal Republic of Nigeria 1999.

ii. in the subject area that falls within state legislative competence, states have largely retained received English laws including its common law and legislation or uniformly enacted them as local laws.

It is further submitted by the learned author that when a matter is governed by a single federal law, it cannot produce a choice of law problem in the inter-state conflict of laws. When a matter is governed by identical legislations of two or more states, it should also not produce a choice of laws problem unless the conflict rules of the two or more states differ.[86] The logical conclusion that may be drawn from the above is that where state laws are the same, the justice or otherwise of the matter is not dependent on which of the states' law is applied. It therefore follows to say that where the states laws are different, the justice or otherwise of the matter depends largely on which of the laws is applied.

The No Conflict Theory

The writer has been able to show that choice of jurisdiction and choice of law are different in the preceding section. The concern here is to examine the Nigerian inter-state tort laws with a view to finding out whether there exists an obvious conflict of laws problem in the Nigerian system of law. In Nigeria, all states have received common law including its conflict rules. It is therefore correct to assume that the conflict rules on determination of the applicable law in interstate conflict of laws is identical in all states.

Agbede has alluded to the fact that where states have adopted and/or uniformly enacted the common law rules, no conflict of law exists.[87] The author unconsciously subscribes to the "No Conflict Theory" when he says;"Under a situation where Snot only the conflict rule but also the municipal law of the various states is substantially uniform, no problem of conflict of laws exists".[88]It is pertinent to note also, that where the states substantive laws as well as conflict rules are uniform, the result of litigation in any of these states is likely to be the same no matter what choice of law rule has been employed. In view of the foregoing, the "No conflict Theory" as

[86]H A Olaniyan Op cit p. 75.
[87] I.O. Agbede Op. Cit., p. 108.
[88] Ibid.

proposed suggests that a state tasked with inter -state tort actions to proceed on the assumption that:

a. forum law is the same as the law of the sister state where the tort occurred;
b. the burden of disproving this lies on the party who alleges the contrary;
c. to discharge that burden the party who so alleges should at least plead the sister state law he has in mind and then convince the court that by the choice of law rules, that sister state law is applicable;
d. in such state/its court should therefore apply its law to determine the dispute unless the party seeking to apply a sister state law disproves this presumption.[89]

Choice of Law in Real Conflict Situation - Where laws are Different

It has been mentioned earlier that constituent state within a federation is as much a sovereign territory as another country. It then follows that states have different laws in respect of subject matter over which they have legislative competence. Where states have different laws in respect of a particular subject, the court may be faced with the real choice of law question. Thus in the US, the courts have formulated variety of rules[90] in determining the applicable law to a given situation; for example, the American court had applied the law of common domicile of the parties which may be different from either or both the law of the forum and the place of the tort.[91]

Although forum law is applied in *Babcock's* case which demonstrates what Currie refers to as "False Conflict", i.e. an instance in which both parties share common domicile, different from either of both the forum and the place of tort. The court however in *Schultz v Boys Scout of America Inc.*[92] where the only interested state as shown in the analysis of the policies behind the laws of the New York (forum) and New Jersey (locus delicti) is that of New Jersey, the New York Court of Appeal hesitated not, to apply the New Jersey rule. In the case of *Noble v Moore*[93] the tortfeasor and the victim, both domicile in Connecticut, are driving in different cars which

[89]Ibid.
[90] Ranging from common impairment, governmental interest analysis, comparative impairment etc.
[91]*Babcock v Jackson* 12N.Y.2d 473 at 483 (N.Y.1963) which should be compared with the Nigeria case of *Aguananme v Nigerian Tobacco*, Company Ltd.
[92] 65 N.Y. 2d 189, 491 N.Y.S. 2d 90 (1985).
[93](2002) WL 172665.

collide in New York. The issue is whether the defendant should be allowed to plead the defence that the plaintiff is not wearing her seat belt at the time of the accident. Connecticut does not allow the defence, while New York allows it but for mitigation of damages, not for liability. Given the latter factor, the court concludes that the New York rule is loss distribution rather than conduct regulating and thus New York does not have an interest in applying it to an accident involving Connecticut parties.

The court are swayed by the common residence, common domicile, insurance and registration of the car in one state while no significant factor other than the institution of the action or occurrence of the event happened in the other. Another rule for determining choice of law is the most impaired doctrine as recommended by Professor Currie which simply enjoins a forum court to always apply its law. Professor Currie's recommendation is applied in the case of *Bernhard v Harrah's Club*[94] the principle simply enjoins the forum court to apply its law having rationalized the policies in such a way that the forum is always the state whose law is most impaired.[95]In *Bernhard v Harrah's Club,*[96] the plaintiff is injured in California, when his car collides with a car driven by another Californian who has been drinking at the defendant's club in Nevada. Under the Californian Law, a "tavern keeper" is liable if he serves drinks to an intoxicated person who subsequently injures a plaintiff. There is no such liability under the Law of Nevada.

After analyzing the policies underlining the different rules in California and Nevada, the Supreme Court of California finds that Nevada has an interest in protecting its tavern keepers from a civil liability not imposed under the law of the state where they sell drinks. California on the other hand has an interest in giving the protection of its law to all Californian residents injured in California. Either state therefore has a legitimate though conflicting interests in applying its own law in respect of the civil liability of tavern keepers. In applying Californian Law, the California Supreme Court takes the position that California interest is more impaired if its laws were not applied. But if the action had been instituted in Nevada, the court of that state would most likely have rationalized the policies behind the laws in such a way as to support a finding that Nevada interest would have been the most impaired.

[94] 1972.
[95] Currie's recommendation has so far been adopted by three states; Kentucky (1972); Nevada (1966) and Michigan (1977).
[96] Supra.

Governmental interest analysis is another rule for determining applicable law in the US, as evinced in the case of *Reich v Purcell*[97]. In that case there is a collision between two cars in the state of Missouri. One car is owned and driven by the defendant who is resident and domiciled in California while the other car is driven by the wife of the plaintiff who at the time resides with the plaintiff and children in Ohio. The defendant is found liable for the death of the plaintiff's wife and one of her children as a result of the collision. Now Missouri Law places a limitation on award of damages whereas California and Ohio Laws do not. The court refuses to apply Missouri limitation and awards damages under the law of Ohio. In refusing to apply either forum law or the law of the place of tort, Traynor C.J. says: *"As the forum, we must consider all the foreign and domestic element and interest involved in this case to determine the rule applicable".*[98]Any Californian interest based on the residence of the defendant or even the present domicile of the plaintiff or the intended domicile of the deceased is rejected.

As between the two foreign states, Ohio is preferred because the law of the place of tort has little interest in such compensation rule when none of the parties resides there, for the object of such rules is to protect local resident defendants and control the distribution of damages to local beneficiaries. Some of the states adopting interest analysis have moderated its pro — forum stance with consideration of comparative impairment, much against Currie's initial recommendation.[99] Symeonides portrays Comparative impairment, thus:

> *Entails a comparison of the adverse consequences (the impairment) of the choice of law decision on the respective interest of the involved states. Needless to say, this is interest weighing by another name. It is the very weighing that Currie's initial approach prohibited, despite his later calls for an enlightened and restrained assessment of state interest.*[100]

English Law Position

[97] 16 Cal 2d 551 432 p. 2d 727 (1966).
[98] Traynor C.J. at p. 730.
[99] See the Californian Supreme Court's decision in McCann *v* Foster Wheeler LLC. 225 p. 3d 516 (Cal. 2010). Discussed in Symeonides Annual Survey (2011) 61 AM Jo. Of Comp. Law 26 -28.
[100] Olaniyan Op Cit., p. 80.

Before the Red Sea Insurance case, the English and Scottish Law Commission has published a working paper and a subsequent report on choice of law in tort,[101] advocating the abandonment of the double-actionability rule[102] but nothing has been done to implement their recommendations.

The Red Sea case is decided in July 1994 and within few months introduced into the parliaments what becomes The Private International Law (Miscellaneous Provisions) Act 1995, part 111, of which reforms the law in this field.[103]It should be noted that the general effect of the *1995 Act* was to abolish the double-actionability rule and substitute a statutory general rule applying the law of the place of the tort with an exception derived from the common law developments in *Boys v Chaplin*[104] and *Red Sea Insurance Co. Ltd v. Bouygues S.A.*[105]

Thus, section 10 of the 1995 Act formally abolishes the rules of common law, in so far as they:

a. require actionability under both the law of the forum and the law of another country for the purpose of determining whether a tort is actionable or;
b. allow (as an exception to those rules) for the law of a simple country to be applied for the purpose of determining the issues, or any of the issues, arising in the case in question.

Section 11 (1) establishes a new "general rule": the rule is that the applicable law is the law *i.e. the internal law, not including choice of law rules, to excluding renvoi: Section 9(5). See also Cap 20 Morris* of the country in which the events constituting the tort in question occur. To the above general rule, there are also certain exceptions as contained under *section 12* in favor of a different rule.

Displacement of the general rule in Philips v. Eyre

The common law rule of double actionability is tempered in its latter years by the flexibility developed in *Boys v Chaplin,*[106] and *Red Sea Insurance Co. Ltd v Bouygues S.K*[107] that notion is retained in the 1995 Act, where the new general rule that the law of the place of the tort governs

[101]Working paper, No 87 (1984); Report, Law Corn. No 193 (1990).
[102] Developed in Philips *v* Eyre supra.
[103] Morris Conflict of Law 6th ed. London Sweet & Maxwell Ltd p 375.
[104] (Supra).
[105] (Supra).
[106] (Supra).
[107](Supra).

can be "displaced" where special circumstances of a case so require. It is held that displacement must be exceptional. The comparison of factors must make it "substantially more appropriate". Substantially is the keyword. The general rule is not to be dislodged easily[108], thus the law applied in the case of displacement may be the law of the forum on the law of some other country. One can note the breadth of the factors that can be taken into account "factors relating to the parties" include the length and closeness of the links between a party and the countries concerned and the existence or otherwise of a relationship between the parties before the tort occurs[109].It should be noted that the determination of the place of tort is done under the received law, in accordance with *lex fori*. The problem however is to ascertain how the *lex fori* approaches the issue. The Supreme Court has been evasive on how *lex fori* approach the issue.[110]

The English courts have generally considered the problem for purposes of assuming jurisdiction under *0.11 R. 1*.For this purpose, it has been decided that the place of tort is where the damage is suffered.[111] It should be noted that rules developed for jurisdictional purposes cannot be safely relied on for choice of law purposes.[112]

> *Under the law of many jurisdictions in the U.S, the place of wrong is located at the place where the last event necessary to make the act liable (for an alleged tort) takes place[113].Under some other jurisdiction, the place of wrong is located at the place where the alleged tortuous conduct was carried out.[114]*

German law appears to have adopted an intermediary position. Under this law, a tort is committed in both the place where the actor engages in his conduct and the place where the effect of his conduct occurred[115]. Action may however be maintained under any of the laws but the plaintiff cannot claim cumulative remedies under both laws. The conclusion one feels inclined to reach is that the ascertainment of the *locus delicti* should depend on the circumstances

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[108]*Roevigv Valiant Travlers Ltd* [2002] EWCA Civ 21; [2002] 1 WLR 2304.
[109] 108 This factor was absent in Boys V. Chaplin, it has been very important in American cases applying a proper law approach; e.g. *Babcock v Jackson,* 191 N.E. 2d 279 (1963) cited by Morris Op Cit., p. 382.
[110]See however *Ezomo v Oyakhire* (1985) 1 NWLR (pt. 2) 195.
[111] See per Du PARLQ L.J in George Monro Ltd *v* The American Cyanamid and Chemical Corporation (1994) K.B. 432 at p.141.
[112] See the Canadian case of Interprovincial Co-operative Ltd V. The Queen in right of Menitoba (1975) D.LR (3rd) 321.
[113] Rabel: The Conflict of Laws: A Comparative Study, Vol. 11(1960) p. 301.
[114] See Koop *v* Bebb where it was held to be the place where the actor engaged in the bodily movement resulting in the damage.
[115] See Rabel Op. Cit., p. 304-305.

of particular case and the purpose for which this is being done[116].In that wise, it is not inappropriate to regard a tort as having occurred in any country which is substantially connected with the tortfeasor's activity,[117]or its consequences and the law of which is likely to have been in the reasonable contemplation of the parties. Interstate conflict problems do not exist within the exclusive legislative field of the federal government. The injured party should be permitted to base his claim on either of the applicable laws, but on no account should the law of the place where suit is subsequently brought be relevant to the determination of liability if in fact the forum has no other connection with the cause of action and the parties.[118] One would have thought contrary to the decision in *Ashiru's case,* that the *lex fori*, as such, has no relevance to the determination of liability in this regard. The writer opines that the decision in *Ashiru's case* suffers from the inherent defect of making the ultimate decision depend on the forum in which the issue has been litigated.

Conclusion

The field of conflict of laws is one of those areas where Nigerian courts rely largely on the imported (English) laws, and the practice in England clearly differentiates between a choice of law and a choice of jurisdiction. The paper herein has been able to portray the Nigerian Courts approach to issues of jurisdiction as well as choice of law in conflict of torts law. The paper has pointed out somewhere that there is a significant difference in the choice of jurisdiction and choice of law, and the Nigerian courts' practice of throwing out cases on the ground only that tort committed in state A cannot be instituted in state B is quite unfortunate and unsupportable in the private international law. It is recommended that a court faced with inter-state conflict of torts law should assume jurisdiction on the basis upon which an English court would. This is even provided for under section 10 of the High Court Law of Lagos and other relevant provisions of the High Court Law of other states. The court should also endeavour to apply the provisions of the Sheriff and Civil Process Act with a view to determining compliance with inter-state service of processes. The practice of throwing out cases based on non-compliance with local venue rule is quite unfortunate and must be discarded.

[116] See Recommendation of the British Law Commission in their working paper No 87 (at 1974).
[117]Agbede, Op Cit., p. 112.
[118]Agbede, Op Cit., p. 114.

For the purpose of revolutionizing the conflict of torts law in Nigeria, it is hereby suggested that the theory of "no conflict" should be adopted by the Nigerian court including the apex court. This is more so, given the fact that the law regulating tort is uniform throughout the federation. The Nigerian federalism is unique in the sense that most matters that ordinarily fall within the competence of states in most other jurisdictions are vested exclusively on the federal government, and it is our submission that the Nigerian courts should have a different approach to what is purely a choice of law as opposed to conflict of laws in the inter-state dimension of conflict of torts law.

It is based on the above and the fuller view expressed in each of the sections of this paper that we subscribe to the theory of no conflict articulated in this paper.