

THEMES ON CONFLICT OF LAWS

TITLE: Themes On Conflict of Laws
AUTHOR: Prof. I. O. Agbede
PUBLISHER: Shaneson C. I. Ltd., Ibadan
YEAR OF PUBLICATION: 1989
NUMBER OF PAGES: 306 + (i) - (xviii)
PRICE: Not Stated.

This is a good book in the modern "easy-to-handle" mould. It has 306 pages of 14 essays which are grouped under five headings. It contains 1,144 footnotes and an index which spans through the last seven pages.

But is one to read a book such as this as a whole or as 14 separate essays? The answer is that despite that there are 14 essays they form a coherent whole to be read as such. The essays are linked together by cross-references and themes recur, for example, the themes on tort.

The author's wide exposure to and broad knowledge of both civil and common law conflictual rules has greatly enriched the quality of the essays as evidenced in the comparative approach and analysis of principles.

However, a reasonable knowledge of conflict of laws is assumed by the author. Thus, while a first-comer to the subject of conflict of laws may easily feel at home with the first chapter of the book, which is merely introductory, the same cannot be said of the succeeding thirteen chapters which treat much more involved conflictual concepts.

The themes are grouped under five headings. The first heading deals with the nature and sources of Nigerian Conflict of Laws which, but for the addition of Public International Law as a source, is similar to the sources of Nigerian Law as generally known. The author's treatment of the *renvoi doctrine* in the second chapter is very masterful.

He fiercely and successfully attacks the commonly alleged claim to uniformity of decisions which *renvoi* affords and suggests, in international situations, a principle of validation through "a process of

alternative reference" along the line of the decision in *Collier V. Rivaz*. This is an approach which if adopted by the Courts would give effect to the prime concern of conflict of laws, namely, to effectuate the just and legitimate expectations of the parties or to achieve conflict justice.

The third chapter discusses domicile and the modifications made (or to be made) to the doctrine in the special circumstances of Nigerian situation. He advocates the adoption of habitual residence, as against domicile, as the basis for application of personal law. This is to avoid the problem of fixity and permanence of intention required in domicile. Chapters 4, 5 and 6 discuss areas in which the application of foreign law is either excluded totally or is just limited.

The author devotes chapters 7, 8 and 9 to tort, which, admittedly, is one of the youngest areas in the subject of conflict of laws. Probably because of its youthful beauty and "undeveloped" nature the author has justifiably given it a comprehensive treatment. While Chapter 7 undertakes an appraisal of the torts law as laid down in the leading foreign cases of *The Halley*, *Philips V. Eyre*, and *Machado V. Fontes*, Chapter 8 appraises the decision in the Nigerian case of *Benson V. Ashiru*, which was decided on the basis of *Philips V Eyre*. As stated by the author, a strict adherence to *Benson V. Ashiru* would mean, for instance, that an action brought under the Abolition of the Osu System Law of Eastern States cannot be maintained in any other state within the Federation in which such a cause of action is unknown. This would be carrying parochialism to absurdity. On the whole, the defects in the *Benson*



**Business &
Property
Law
79**

Vol. 3 No. 14



Business &
Property

Law

80

Vol. 3 No. 14

V. *Ashiru* decision are concisely captured at page 174 of the book wherein the author also proffers explanation for the continued poverty of remedial measures. At chapter 9 the author discusses the theoretical approaches to determine the proper law of the tort.

The last heading of the book, which has four chapters, deals basically with jurisdiction, both *in rem* and *in personam*, and both international and interstate.

The book is invaluable for many reasons. Firstly, it is the first book written on the subject in common law Africa. It is the product of many years of university teaching and patient research into the law in Nigeria and other common law countries and even in the continent. An easy evidence of this research can be found in the many footnotes. The cases cited span from the very old to the most recent, and from the most foreign to the most local. The book has really come to fill a vacuum.

There is however no doubt that in the publishers' hurry to bring out the book, they flurried in the process. There are some printing errors and only a few of such errors which I consider a bit serious may be mentioned here.

At page 35 paragraph 3, part of the last sentence thereof reads: "... when same uniformity has not been achieved internationally". This last word should be *internally*, not *internationally*. Also, a reader may find it impossible to read the case of *Olowu V. Olowu* because its citation at footnote No. 74 at page 43 is HWLR (which is not existing) instead of NWLR.

Again, it appears the sixth word in paragraph 2 at page 142 has been misprinted as "commended" instead of "commenced".

The above errors, however, relate to peripheral matters. In the core of the book the author shows great balance and subtlety in his analysis of the law and he has been able to include a surprising amount of detail in so short a compass.

To sum up; a first-class book that should provide a sound source for the law student, legal practitioner and the Judge. The publishers are also to be complimented both for their speed of delivery and for the quality of the goods. It is hoped that the cover price that will finally be put on the book will not be such as would take the book out of the reach of those for whom it is intended.

E.E. ESSIEN (LL.M)

Lecturer - In - Law

Cross River State University.