

Ministry of Higher Education and Scientific Research
Al -Alamain Institute for Graduate Studies
Private Law Department



Impact of Globalization on The Conflict of Laws
(A Comparative and Analytical Study)

A Thesis

submitted to the Council of Al -Alamain Institute for Graduate Studies in
Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy
in Private Law

By

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List of Abbreviations

Abbreviation	Full Form
A.D.	Anno Domini
A.H.	Anno Hegirae
AI	Artificial Intelligence
ANT	Actant-Network Theory
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
CIDIPs	Inter-American Specialized Conferences on Private International Law
CISG	United Nations Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
CNIL	Commission Nationale de l'Informatique et des Libertés
CoL	Conflict of Laws
DAOs	Decentralized Autonomous Organizations
EC	European Community
ECJ	European Court of Justice
ECLI	European Case Law Identifier
ECT	Energy Charter Treaty
EDPB	European Data Protection Board

EJN	European Judicial Network
EU	European Union
EWCA	Court of Appeal of England and Wales
EWHC	High Court of Justice of England and Wales
FIDIC	International Federation of Consulting Engineers
FOSFA	Federation of Oils, Seeds and Fats Associations
GAFTA	Grain and Feed Trade Association
GATT	General Agreement on Tariffs and Trade
GDPR	General Data Protection Regulation
GEDIP	European Group for Private International Law
HCCH	Hague Conference on Private International Law
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ILM	International Legal Materials
ILR	International Law Reports
IMF	International Monetary Fund
ISDA	International Swaps and Derivatives Association
ISDS	Investor-State Dispute Settlement
ITU	International Telecommunication Union
KB	King's Bench
LMA	Loan Market Association
MPEPIL	Max Planck Encyclopedia of Public International Law
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHADA	Organisation for the Harmonization of Business Law in Africa
PCA	Permanent Court of Arbitration
PHEIC	Public Health Emergency of International Concern
PICC	UNIDROIT Principles of International Commercial Contracts
RIAA	Reports of International Arbitral Awards
SGCA	Singapore Court of Appeal

SGHC	High Court of Singapore
SSCs	Standard Contractual Clauses
TFEU	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UCP	Uniform Customs and Practice for Documentary Credits
UK	United Kingdom
UKHL	House of Lords (United Kingdom)
UKPC	Judicial Committee of the Privy Council (United Kingdom)
UKSC	Supreme Court of the United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
WB	World Bank
WTO	World Trade Organization
YCA	Yearbook Commercial Arbitration

ABSTRACT

This thesis explores how globalization has impacted the conflict of laws and explores how it is transforming the theoretical basis, structural doctrines and functional role of the discipline. Historically, the conflict of laws is built around territorial sovereignty, state-based connecting factors, and legal certainty. Globalization, however, has transformed the context within which the discipline functions due to increased cross-border trade, digitalization, rise of private actors, and increased non-state rule-making. The key question that this thesis seeks to answer is whether these developments only continue to increase cross-border disputes or rather bring about a more profound structural change in the nature and functioning of the conflict of laws. It explores classical theories of conflict of laws, globalization, the place of sovereignty and legal certainty, the growth of party autonomy in international trade and the development of privately produced normative structures. By so doing, the paper will measure the theoretical and practical implications of globalization on the modern day private international law.

This thesis finds that globalization has brought about a structural change and not a quantitative increase in the number of cross-border transactions. It redefines, but does not abolish, state sovereignty; questions territorially-bound connecting factors; and redefines legal certainty as a strict state-based principle into a more plural and controlled one. This study also concludes that globalization enhances the autonomy of parties as a key regulatory feature in transnational business and enables the

development of what this thesis theorizes as International Subjective Rules: party-based, transnational normative systems that transpire across jurisdictions and impact the settlement of private international disputes. These results indicate that the conflict of laws can no longer be sufficiently considered as a state-centric field. Rather, it is becoming a hybrid and pluralist form of governance where the law of the state, private ordering, transnational norms, and regional cooperation interplay. States are still considered to be indispensable as the ultimate source of legitimacy, enforcement and the control of public policy, but their functions are more and more mediated by judicial discourse, international cooperation, regional integration, and selective acknowledgment of non-state normative orders.

The thesis comes to the conclusion that conflict of laws is not decreasing in the context of globalization. Instead, it is being redefined as a core constitutional and coordinating mechanism of world private ordering. It plays a mediating role between sovereignty, market integration, and legal pluralism in this new role and is still critical to the regulation of the private legal relations in a changing global legal environment.