



The International Jurisdiction Rules and Their Relationship with the Conflict of Laws Rules: A Comparative Study in the Egyptian and Iranian Law

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Abstract

International jurisdiction rules constitute a core component of private international law. Despite differences in how various countries approach international jurisdiction, legal scholars continue to debate the fundamental nature and characteristics of these rules. The interplay between jurisdictional rules and conflict of laws rules also remains a complex and contentious issue. This article adopts a descriptive-analytical approach to explore the rules of international jurisdiction, with a particular focus on the legal systems of Iran and Egypt. This study examines the essential features of international jurisdiction rules and investigates the mutual influence between these rules and the rules of conflict of laws.

This paper identifies three fundamental characteristics of international jurisdictional rules. First, these rules are inherently national. Each country's legislature establishes these rules independently, without coordination with other legal systems. This lack of harmonization results in significant discrepancies between countries' jurisdictional rules, often leading to complex situations such as parallel proceedings. Second, international jurisdiction rules are procedural. They do not resolve the substantive legal dispute themselves; rather, they determine which court can hear the case. Third, international jurisdiction rules are unilateral, as they merely establish the conditions under which national courts may exercise jurisdiction over a dispute. They do not extend beyond this function and do not determine which foreign court has jurisdiction.

The paper demonstrates that legal systems adopt a variety of grounds to establish the international jurisdiction of their courts. Among the most



widely recognized is “the defendant’s domicile or residence”, which is based on the principle of protecting the defendant. This ground is recognized by both the Iranian and Egyptian legal systems. Another significant basis for establishing international jurisdiction is “the defendant’s nationality”. Under this ground, the plaintiff is entitled to initiate legal proceedings in the courts of the defendant’s home country. Article 28 of Egypt’s Civil and Commercial Procedure Code explicitly recognizes nationality as a valid criterion for jurisdiction. In contrast, Iranian law does not accept nationality as an independent ground for asserting jurisdiction. Additionally, “the plaintiff’s nationality” has been proposed in some legal systems as a potential ground for international jurisdiction. Under this ground, the defendant would be required to appear before the courts of the plaintiff’s home country. However, this basis is often criticized for its potential to facilitate procedural abuse. Due to these concerns, neither the Iranian nor the Egyptian legal system recognizes the plaintiff’s nationality as a valid ground for establishing international jurisdiction. Moreover, “the place where the obligation originated or is to be performed” and “the location of the property” are widely accepted grounds. Under Egyptian law, the place where an obligation arises or is to be performed is a valid jurisdictional basis for both contractual and non-contractual obligations. In contrast, Iranian law applies this rule only to contractual obligations, granting jurisdiction to either the court where the contract was concluded or the court where the contract is to be performed. Iranian law does not have a specific provision for non-contractual obligations. Regarding property-related jurisdiction, both Iran and Egypt give exclusive jurisdiction to courts where immovable property is situated. In disputes involving movable property, Egyptian law grants jurisdiction to the court where the property is located. However, in Iranian law, the plaintiff may bring the case before the court where the contract involving the movable property was concluded or where the obligation is to be performed, as long as the dispute arises from a contractual relationship.

In addition to the core grounds governing international jurisdiction, it is essential to consider the concepts of “related claims” and “preventing denial of justice”. In certain legal systems, the court adjudicating the primary dispute is also vested with jurisdiction over related claims, even if it does not have jurisdiction over such claims. This ground has been accepted in the legal systems of both Iran and Egypt. Furthermore, there is a prevailing perspective that, in instances where none of the rules of



international jurisdiction can be applied, a national court may assert its jurisdiction to prevent denial of justice. This ground is recognized under specific conditions within both Egyptian and Iranian law. In addition to the aforementioned jurisdictional grounds, “the principle of party autonomy” constitutes a significant basis for establishing international jurisdiction. This principle permits the parties to a legal relationship to mutually designate the court that shall have jurisdiction over potential disputes. This ground has also been accepted in the legal systems of both Iran and Egypt.

The paper also demonstrates that, in principle, there is no necessary correlation between the international jurisdiction rules and the rules of conflict of laws; the two are fundamentally independent. Nevertheless, in certain instances, the principle of separation is breached, and they may influence one another. This is particularly evident given that the determination of international jurisdiction precedes the identification of the applicable law. As such, the impact of international jurisdiction on the applicable law is self-evident, since courts invariably apply their own conflict of laws rules, which often differ from those of other jurisdictions. Conversely, the applicable law may also influence international jurisdiction, both positively and negatively. In certain cases, domestic courts may initially lack jurisdiction over a dispute; however, given that the applicable law is the law of the seized court, the court may ultimately assert jurisdiction. Article 30 of Egypt’s Civil and Commercial Procedure Law exemplifies this situation. On the other hand, there are instances in which a court may have jurisdiction to hear a case but decline to do so because the substantive law governing the dispute is foreign and the court is not familiar with it.

Keywords: International jurisdiction, conflict of laws, procedural rules, substantive rules, defendant domicile, party autonomy.

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