THE PARTICULARITY OF THE CONFLICT OF LAWS IN MOROCCO: THE INVERSED CASE OF THE PERSONAL STATUTE OF FOREIGNERS.

Sayf Eddine Essadik
Zhongnan University of Economics and Law, People's Republic of China,
bousri2010@hotmail.com

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Abstract

Morocco has one of the oldest international private law statutes that are still working, to some extent. The environment in which that law was adopted and the current environment in Morocco are in complete and utter discord. Yet somehow, this statute stayed in effect and even today is applicable in competition with other laws. This paper strives to elucidate the complexity jurists in Morocco must deal with due to the absurdity in matters of the personal statute of foreigners. This paper seeks to explain the historical and legal basis for Morocco's approach to international private law, particularly in matters concerning the personal statute of foreigners. Not only has the general theory (qualification, public order, renvoi, and evasion of law) evolved in a specific way, but so has the application of these principles to the subject matter, the personal statute. Given the importance of the historic element in the adoption and development of this field, the method used for this study is juridical normative with historical-descriptive characteristics; a historical description is required. The research method used is qualitative. The findings of this paper will highlight the need for change or clarification of the confusion that this blending of different legal provisions causes for legal professionals and partitioners alike.

Keywords: Conflict of Laws, France, Morocco, Personal Statute, Private International Law.

A. Introduction

In recent years, Morocco has been known for emigration and has become a country of immigration. Most immigrants are sub-Saharan nationals, people who were coming to complete their studies or fleeing conflicts, or transiting to Europe. It has recently been hosting an increasing number of refugees from sub-Saharan Africa, as well as Syrian and Libyan citizens, among others. In addition, Morocco has seen an increase in tourism over the years, with more than 10 million visitors in 2013. With so many foreigners on Moroccan soil, the question arises: what law applies in litigation involving an international element before a Moroccan Court? The answer to this question is merely a technical solution, which does not
satisfy any enlightened jurist. For this, a historical approach is required before studying the solutions proposed by the Moroccan legislature.

The Moroccan legal system never faced the problem of conflict of laws. Before the French colonization modernized the legal arsenal, there was one distinction between the Muslim and the Non-Muslim. The first ones were subject to the Moroccan law, mainly Islamic law (Sharia); the second class was subject to their religious law, the Canon law for Christians and the Halakha for the Jews. Bearing in mind that the non-Muslims could choose to be governed by the Sharia Law if they wish. The Moroccan system will remain oblivious to the conflict of laws, even though a wave of colonizers will start settling in Morocco. Many imperial powers started establishing their settlement in different coastal cities, although small, yet significant for the problem of conflict of laws. They will seek to protect their nationals from the jurisdiction of Moroccan judges, in a sense to protect them from the Moroccan people. As things stand, a great scope of conflict would usually arise. However, the imperial powers, at the time, subject their nationals to the consular jurisdiction of their nationality.¹

This led to some absurd cases, for example, a couple from different nationalities, in which one of the parties’ national law accepts divorce, and the others refuse it, each one of them, when subjected to his consular jurisdiction, would be given a different decision for the same litigation. On March 30th, 1912, the Treaty of Fez was signed and made Morocco a French protectorate (colonization through the back door). The French agreed with the other powers; to get Morocco; France had to guarantee that their nationals would be granted the same rights they have in their homelands. Also, French nationals would not come and settle in Morocco if they were not bestowed the same prerogatives that they enjoyed in France. The perfect remedy was brought forward by the Dahir² of August 12th, 1913³ concerning “the civil condition of the French and foreigners” (From now on, the DCC). By the authority of this law, foreigners in Morocco generally submitted to the law of nationality Lex Patriae in a matter related to Personal Status.

This move to codify solutions to conflict of laws is foreign to French civil law; except for articles 3, 14, and 15 of the French Civil Code, the legislator did not legislate much about conflict of laws and jurisdictions. The latter conflicts were shaped in every aspect by the courts’ jurisprudence. The pre-colonial doctrine admitted this choice of the Lex Patriae for meanly two reasons; the first one being the contractual nature of the Moroccan private international law⁴. As previously stated, the French get to have Morocco as long as they protect the other imperialist power’s nationals. Moreover, the second argument was that Morocco did not have a Lex Fori in matters of Personal Status⁵.

On November 18, 1956, King Mohammed V delivered the first throne speech following independence, stating that French citizens' rights and personal status would be guaranteed; this promise, by analogy, benefits all foreigners. Following that, the Law remained unchanged, but the distinction in the text between French and foreigners fell out of use, so we only speak of foreigners. Modern doctrine maintains the same option, but for different reasons. The first one is that the Muslim tradition upholds the principle of the personality of

³ The use of Private International Law in this article is interchangeable with Conflict of Law. The Moroccan doctrine uses mainly, if not exclusively, the term Private International Law. However, in a globalized world and a more and more inclusive one, we saw fit to use both interchangeably to make scholars from the Common Law tradition feel more at home.
⁴ Personal Status in the Moroccan private international law includes: Legal Capacity, Marriage, Divorce, Inheritance, Child Custody, Testament, and Bequest… This matter is understood in a broad sense.
Law, thus submitting the foreigners to the personal status of their Lex Patriae. Moreover, Morocco is a state of emigration and would like to have its citizens abroad under the authority of the Moroccan Law. This choice might also be because the State does not pursue a policy of assimilation; the Law of nationality keeps foreigners attached to their native country.

Having one of the oldest codes establishing rules to govern Private International Law (PIL), the Moroccan experience did not have the place it deserves in influencing the PIL codifying movement. Over a hundred years, this piece of legislation remained intact, so it was up to the courts to clear up some dark spots in it; ultimately, the legislator made exceptions in different codes to the solutions to conflict of law as stated in the DCC. This study tries comprehensively to decipher the apprehension of the theory of conflict of laws under the Moroccan legal system, emphasizing personal status. This article discusses the personal statute, which is the polar opposite of a general statute in that it only affects one person rather than an entire community. According to previous studies, this research focuses on foreigners’ status, even though they intersect.

Article 3 of the DCC6 submits the personal status of a person to the Lex Patriae. After ninety years, article 2 of the Moroccan Family Code7 (Called also Moudawana) brought several exceptions to that rule, thus submitting some conflicts to the Lex Fori. As a result, the exception became the rule and vice versa. The situation becomes absurd and inversed because the exceptions severely limit the principle's operating field. The preceding data raises the following questions: How does Morocco’s legal system apply the general theory of conflict of laws? Furthermore, what distinction does personal status have in applying the rule of conflict of laws?

To address the above questions and study the matter in-depth, we will proceed with the normative juridical method while overlaying this topic's historical-descriptive characters. Since the historical backdrop of the subject is deeply intertwined with the rationale that led to adopting these rules, the need for the historic descriptive method is apparent. Yet it is not the primary method since it complements the normative legal research method on which the foundation of this article is based. This article will provide an overview of the general theory of the conflict of laws under the Moroccan legal system, which includes a study of the core tenant of this general theory. Moreover, we will then proceed to distinguish the particularities of the Personal Status rules.

Beyond this concept and definitions presentation, we will seek to limit and understand the distinctions that have ensued after adopting these principles from French law, mainly post-independence. In this sense, the historical, descriptive method will also be of the essence since it will enable us to provide the rationale, as we mentioned, and present the novel aspect in which we can appreciate this matter.

B. Discussion
As aforesaid, private international law has been established peculiarly. The French doctrine and jurisprudence played an important role, especially in shaping the foundations of the general theory of the conflict of laws. Their role was equally important in implementing this theory, as we know it today, in the Moroccan legal system. It deals with four preliminary points at issue, some of which arise before solving the conflicts: Qualification (a) and Renvoi (b). Others succeed in resolving the conflict: Evasion of Law (c) and Public Ordre (d).

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6 Article 3: The Status and Capacity of the French and foreigners are governed by their national law. (DCC)
a) The Qualification
Referred to as "Classification" or "Characterization" in the Common Law Systems, qualification (Fr. Conflict de Qualification) itself is not a problem; it is instead the conflict of qualification between the law of the forum and the applicable foreign law. Qualification is not a particularity of private international law. Other branches of the law have qualification conflicts; e.g., in Civil Law, a judge will determine if a contract is a sales contract or a lease, for the qualification of the parties to such contract does not matter, only the legal qualification matters.

Three French jurisprudence cases underline the qualification's importance: The Maltese marriage case; The Greek Orthodox marriage; The Dutch will. We will restrict our focus to the first and the oldest case, the Maltese marriage case. "A married couple domiciled in Malta migrated to, and settled in, Algeria, and, after the husband's death, his widow claimed a usufruct in a quarter of his estate by Maltese law. The question whether she was so entitled had to be characterized as matrimonial (in which case she won according to Maltese law) or as inheritance -fr. successoraux- (in which case she lost according to French law)." Whenever confronted with such conflict, a judge has to qualify according to the law of the forum (Legi Fori) or the foreign law (Legi Causae).

The Moroccan jurisprudence chooses the qualification Legi Causae for two reasons; primarily, the lack of a Lex Fori in personal status matters because of the various confessional laws; secondly, Morocco has to honor the engagements taken by France during the protectorate. This was the position of the jurisprudence under the protectorate. The Rabat Court of Appeals rendered two landmark cases adopting the qualification, Legi Causae. However, the Court of Cassation ruled on two different cases by adhering to the doctrine of Legi Fori. We sincerely believe this position is the most reasonable for the following reasons. In 2016, neither of the arguments brought forward to justify the qualification Lege Causae can be accepted.

The new Family Code (Moudawana) adopted in 2004 is a law that is skillful and coherent enough to play the role of a Lex Fori about personal status. Furthermore, this latter code governs the majority of Moroccans and even more, as we shall see (The privilege of religion). As for the second argument, today, Morocco cannot be urged to respect engagements taken by a colonial power under particular circumstances. In short, it is still up to the courts to clear up the misunderstanding, and in particular, it is the Court of Cassation, as the highest jurisdiction in the land, the Court of final appeals and a court that examines the law than facts. The Court must clarify the position of the Moroccan law on the matter, regardless of the position it would take.

b) The Renvoi
The doctrine of the renvoi is when the law of the forum chooses a foreign law to govern a situation by not only referring to its substantial law but also to its conflict of law norm, which can either send back the competence to the law of the forum or a different jurisdiction. Two types of renvoi are admitted. Firstly, the renvoi of the 1st degree is admitted by the courts in France for the first time through the case of Fargo (1878/06/24) in a matter related to succession. Although many were hostile to this doctrine, the French Court of Cassation maintained applying such a principle in many decisions. E.g., Succession of movable (case of Soulli 1910/03/09, Belattar 1963/11/07, De Marchi 1938/03/05), Divorce (Case of Birchall 1939/05/10), affiliation (case of Sommer 1953/12/09).

Secondly, the renvoi of the 2nd degree happens when the conflict of law rule sends the competence to foreign law, and this latter has a rule that gives competence to a third country. If we accept the renvoi of the 1st degree, there is no reason to refuse that of the 2nd degree. Courts have admitted it in France. E.g., Appeal Court of Aix-en-Provence of 1981/01/21
The admissibility of such renvoi opens the doors for renvoi to a 3rd degree, a 4th one, and so on.

The absurdity of such doctrine was referred to many times. The first criticism is that such a doctrine does not clearly understand the conflict of law rules. Once a judge is before a question of conflict of law, the latter does not refer to foreign law to solve it but rather to his own jurisdiction’s law. Suppose the judge was to apply a foreign conflictual rule by his local conflictual rule that forwarded to the foreign one. In that case, he might face two rules, each giving a contradictory solution to the same matter. In other words, by applying the foreign law’s conflictual rule, he is giving a solution contradictory to the will of his legislator. In this resides the absurdity of such a concept. Another section of the scholarship criticized it for infringing the principle of sovereignty. Whence the legislative body chooses which law applies to a conflict, it does not consider the conflictual rules of another jurisdiction. The *lex fori* designates the substantial law applicable to a conflict without caring about the foreign conflict of law rules.

The third form of criticism argues that the renvoi could lead to a vicious circle where explicitly the applicable rule contradicts the express will of the *lex fori*. In the renvoi of the 1st degree, it might apply the *lex fori* gives competence to foreign law, and the latter sends back the competence to the *lex fori*. The second kind of vicious circle is when the forum sends to foreign law, the third law, and the latter to another. This form of "international tennis game" leaves much to be desired about this doctrine, for it becomes inapplicable and pauses the quest for a solution to the conflict.

The arguments for the question are equally arguable and have some tenacity. They argue that the reference to a foreign law should not be understood in such a limitation sense and should take into the substantial foreign law and the conflict of law rule of that jurisdiction. One cannot limit what is not limited explicitly. The sovereignty infringement claim is also considered quite selective for them, for one might argue any use of foreign law can infringe in one way or another on the sovereignty of the forum, whether substantive or conflictual law. The question of the vicious circle is brushed aside with the argument that there is always the solution of the *lex fori* to solve cases that take an absurdist turn.

Under the protectorate, some authors claimed that the removal system could not be applied to Morocco for at least two reasons: - On the one hand, the principles of the private international law were opposed to it. On the other hand, in the case of renvoi, no law could play the role of the *lex fori*. Nevertheless, the two arguments used to reject the renvoi system seem to us to be inconsistent with our time. Indeed, since Morocco's accession to independence, there was no reason why the personal status of foreigners should still be respected, as socio-political conditions have changed considerably. About the alleged absence of *lex fori* in Morocco, it cannot be argued that in the event of first-degree renvoi, the new family code can perfectly play the role of a *lex fori*. It should be noted, however, that if the renvoi system were to be accepted in Morocco, it would be for its benefits rather than in a spirit of vengeance on the past, as advocated by a portion of Moroccan doctrine. Since Morocco's independence, no legislation has either enshrined or rejected it, and case law has yet to be decisive.

c) **Evasion of Law**

The Moroccan law is inspired by French law and has transposed many principles from private international law as understood in France. Evasion of law (fr. fraude à la loi) is a standard sanction for the malicious manipulation by one of the parties of the law applicable to get an advantage that the applicable rule would not allow.
It’s quite an old doctrine in the general conflict of laws theory. It dates back to the famous case of ‘Princess DE BAUFFREMONT’ (March 18th, 1878). Briefly, Princess DE BAUFFREMONT lived in France, separated judicially from her husband. The spouses were French and French law prohibited divorce at the time because she wanted to marry Prince BIBESCO. The princess obtained her naturalization in Germany. According to the law of her new nationality applicable and under the French rule of conflict of laws, the judicial separation of goods is equal to a divorce. She could therefore remarry immediately. The second marriage was declared without effect in France. The Court of Cassation held that the princess could not be allowed to invoke her new nationality obtained with fraudulent intent to evade French law.

The mechanism of the evasion of law and its sanction is easily graspable. Knowing the rule that will apply to the conflict, one of the parties will try to choose the connecting factor that is more favorable to that party. Although without this malicious intervention, another rule will be applicable. In applying the doctrine of evasion, the judge opposes the perpetrator of this malice, the maxim “La fraude corrompe tout sous forme de l’exception de la fraude a la loi”.

The evasion of law cannot be claimed absurdly. Certain elements are necessary to determine the existence or not of the evasion of the law. (i) The voluntary use of a choice of law rule. In this sense, evasion happens when a person's will can bend the applicable rule. E.g., evasion of law is inconceivable when it comes to the law applicable to immovable. The choice of law applicable to immovable property is the place where it is located; in this sense, it could not be tampered with unless a person could physically change the location of immovable property from one jurisdiction to another.

The intention to evade an obligatory disposition of the law. This intentional alteration of the applicable law isn't the result of a desire or a wish to get a result that would benefit a person. But it must be accompanied by the intent to change the relevant connecting factor to get this desirable result. Nevertheless, the proof of intent can prove quite problematic, and it can only be appreciated from positive action that might lead to it. E.g., in the case of the Princess of Bauffremont, divorce was required immediately after the acquisition of the German nationality; also, never the residence in Germany was established.

Once these requirements have been met, the judge will consider that the effect of the fraudulence connecting factor is unopposable in the forum jurisdiction. The effect's non-opposability does not imply its nullity. And the judge must apply the law as it would have been applied if such maneuvers had not been used. As a result, the judge can only declare that the action has no bearing on his jurisdiction.

Two kinds of evasion of law can be concluded from all of this: The evasion of the law of the forum and the evasion of foreign law. For the evasion of the Moroccan personal status law, as a lex fori, changing nationality is technically impossible. Because the voluntary acquisition of a foreign nationality does not cause the loss of the Moroccan nationality. In the event of a conflict of nationalities involving Moroccan nationality, Moroccan nationality prevails in personal status. So far, no application for loss of Moroccan nationality has been approved; Moroccan law will apply and will always prevail over others before the judge. Moreover, if a Moroccan citizen has regularly acquired foreign nationality and remained a Muslim, his status in Morocco does not change in principle because his status as a Muslim imposes the application of local Muslim law regardless of his new personal status law.

Is evasion of a foreign law, however, sanctioned by Moroccan law, even if it is not concerned? Morocco's legal system has yet to rule on this specific issue. To the best of our knowledge, no Moroccan court has ruled on this specific issue. In any case, the DCC expressly uses the concept of legal fraud in an article relating to the determination of foreign companies, Article 7, which states that "the nationality of a corporation is determined by the
law of the country in which its legal headquarters is established, without fraud." Thus, Moroccan courts will be able to recognize a company as a nationality other than that arising from the law of its usual head office if that current head office proves to be fraudulent.

d) Public Order

Public order can be defined as an excellent correction that disregards applying a foreign norm that is usually applicable in the case because the application of that foreign norm would intrinsically shock the country of the forum. This definition refers to two essential elements of the public order.

The first is that the two legal systems are non-compatible, one with the other. The irreconcilability result from the incompatibility of the subject states' internal laws. Namely, the forum's internal law and the law's internal law applicable by choice of law rules. Secondly, the public order applies to cases in which discordancy between the social, moral, political, or economic order of the law of the forum and the law of the foreign law. For example, same-sex marriage has been approved by the French Parliament since 2016, but such marriage doesn't exist under Moroccan law. Whenever a situation arises concerning such marriage, the Moroccan judge could not accept it. So, he would invoke the public order as an excuse not to apply the French provisions. And the opposite applies to the French judge. French Courts considered that the nonexistence, or in-acceptance, of same-sex marriage under Moroccan law, is contrary to its public order.

Also, polygamy is an existing institution under Moroccan law. It is not the case under French law; the judges have made it a habit of opposing the violation of public order whenever such provision is applicable in France. In both cases, the judges would deem that the foreign law is the one applicable to this specific conflict, according to their conflict of law rule. However, in applying it, they would disturb and shock the moral order of their society. They oppose the public order as an exception to such application. About the areas of contracts and exequatur, public order has found several applications. Regarding personal status, some authors felt it had no role in Morocco.

The so-called international public order had a rather particular aspect in Morocco. It has been argued that the average effect of the public order exception is the substitution of the usually competent foreign law by the lex fori. However, some authors have argued that this effect cannot occur here since there is no fundamental Moroccan law on personal status. For its part, the case law has rarely ruled out the usually competent foreign national law because the Moroccan international public order opposed it. The courts have, on the contrary, tried by all means to respect in its the personal status of foreigners. The solution was justified by the idea that Moroccan rules of conflict of laws found their factual basis in customary international law. But since Morocco acceded to independence, the use of the term has become more frequent, so the Rabat Court of Appeal, in its judgment of February 10, 1960, decided: "While the Moroccan state is a theocratic monarchy... that all violations of the Muslim religion are at the same time brought against Moroccan public order. Moreover, reading the Code of Civil Procedure of 1974, it is noticeable that several personal status procedures regulated in the old code have not been resumed: separation of goods, adoption, and judicial recognition of natural paternity. These are procedures that correspond to institutions unknown to Moroccan domestic law, so the judicial implementation was not foreseen in the new code. Similarly, Morocco's agreements with Muslim and European states specify that laws designated by the conflict rules contained in the various conventions only apply if they are not contrary to the public order of the forum state. E.g., Article 4 of the Franco-Moroccan Convention of August 10, 1981.
2. The Particularity of the Rules Governing Personal Status
a) The Principle: The Law of Nationality as a Connecting Factor

The DCC sets an apparent connecting factor for the personal status matter, that of the lex patriae. Article 8 and 9 submits the marriage and the divorce to the same connecting factor, that of nationality. It's indeed the nationality that deals with these questions under Moroccan law. The scholarship has been divided between two currents of thought, the classical and the modern. For the classicist, the rule of conflict of law is imposed by international agreements. It is under these agreements that foreigners have found intact after their country's renunciation of the privilege, the exercise of rights they enjoyed under their personal status, which must be respected in an absolute manner.

Similarly, in the Speech from the Throne of November 18th, 1955, the King of Morocco stated that he wanted to guarantee French citizens' rights and personal status. Such declaration benefits all foreigners on the right under the principle of legal equality for all foreigners in Morocco. The importance of national law was affirmed under the protectorate by a unanimous doctrine, also adopted by the jurisprudence of the time and even sometime after Morocco proclaimed independence. For the modern doctrine, the attachment of personal status to the national law is, in reality, only the consecration in a modern system of conflict of the laws of the Muslim tradition, that of the personality of the laws and which consists of subjecting foreigners in matters of personal status to their original law.

Moreover, another argument, Morocco is a country of emigration. The attachment to nationality allows keeping Moroccans resident abroad under the rule of their original law. Also, the attachment to nationality is respect for foreign institutions in this area of law - personal status-. Where there are increasing differences between legal systems, this linkage criterion allows foreigners to keep ties with their country of origin. Finally, the solution can be explained by the fact that Morocco does not pursue any policy of assimilation.

The application of nationality as a connecting factor creates problems in three cases: The absence of nationality, the plurality of nationality, and the changing of nationality. A person who has no nationality is said to be stateless, with no legal or political connection to a specific state. In this case, we cannot use national law as a connecting factor to remedy this situation. Specific legal systems retain the country with which this stateless person has ties. This country may be the residence or, if not the usual residence, in the absence of a habitual residence or residence, it is the lex fori that will govern their personal status. This is particularly the solution adopted by the New York Convention on 28th, 1954, on the personal status of stateless persons. As for Moroccan law, Article 2 of the Family Code states that the provisions of this code apply to refugees, including stateless persons, following the Geneva Convention of July 28th, 1951, relating to the situation of refugees.

When the conflict of laws concerns the same individual with several nationalities, this person might be subject to several statutes. The DCC resolves the difficulty with an applicable rule, leaving it to the judge to determine the application status. The judge must look for, among the different nationalities at issue, the one closer to his legal status. This solution is now classic; it was adopted by other systems and enshrined by the International Court of Justice in the NOTTEBOHN case of April 6th, 1955. In this sense, the Casablanca Court of Appeal ruled in its judgment on April 13th, 1989. But in the event of a conflict in which Moroccan nationality is concerned, that connection prevails even if it is purely legal and does not correspond to the actual behavior of the party in question. The Family Code established the rule, stipulating that "the provisions of this code apply to all Moroccans even those with another nationality ...". This is the solution when the plurality of nationality concerns only one person. A problem arises when this plurality of nationality concerns several people.

Three systems were proposed in this case:

1. The Cumulative application of the laws in question: for example, divorce between spouses of different nationalities will only be pronounced if it is allowed by the two national laws. This system can prove quite difficult since basically it seeks to apply the most restrictive law among the many nationalities one can hold. And international private law doesn’t seek to over complicate the conflicts.

2. Distributive application which consists of applying to each person his national law. This was the case in Morocco during the protectorate.

3. Application of one of the national laws of the nationalities at hand (choice of laws after careful consideration). This is the solution that is adopted by the Moroccan legislator.

The change of nationality is another difficulty in applying national law, as there are two national laws, that of old nationality and that of a new nationality; which one to apply? This is the problem of "the mobile conflict". Under Moroccan law, the rules of internal transitional law are applied to the matter of mobile conflict. The new law is not retroactive but of immediate application. Thus, a legal situation extending its effects over time is subject to two laws: past effects are governed by the old law, and the future effects by the new law. Whenever the legislature does not specify the applicable law over time, the new law must apply in the future. The case law is well established in this sense. For example, the Court of Appeal of Rabat, on November 14th, 1939, applied French law to the divorce application filed by a husband of Greek origin but naturalized French "having naturalized French is found subject to the effects of his divorce application to the provisions of the French Civil Code."

b) The Exceptions to the application of the Lex Patriae

Two sections form the exceptions to the application of the lex patriae: The exception of nationality and the exception of religion. The privilege of nationality is an indirect link that could be deduced from the provisions of the Dahir of March 4th, 1960, regulating the celebration before the civil registry officer of marriages between Moroccans and foreigners (From now on, Civil Celebration Law). This latter subjects this celebration to two conditions:

1. The marriages should not be prohibited by the personal status of the Moroccan spouse.
2. The civil registry officer can proceed with this celebration only upon presentation of the marriage certificate made in the Moroccan form.

The subordination of the celebration before the civil registry officer to the last consecration before the Adouls or Rabbis inevitably takes into account only the status of the Moroccan spouse. Sometimes leading to disregarding the requirements of the status of the foreign spouse. This nationality exception was affirmed by the Family Code stipulating that "the provisions of this code apply to couples whose spouses are Moroccan".

The courts of Islamic law apply only the Sharia rules and not the rules of private international law. The Dahir instituted the exception of religion on April 24, 1959, and this text was of procedural origin insofar as it provided for the submission of Muslim foreigners to the same jurisdictions as Moroccan Muslims. So, these foreigners will be subject to Moroccan Muslim law becomes a matter of substance and not of the procedure. This has been interpreted by jurisprudence as instituting a substantive rule. This rule involves subjecting Muslim foreigners concerning their personal status to Islamic Moroccan law of personal status. However, Morocco abolished the religious courts in 1960, but the court has maintained these principles. In its leading decision of July 5, 1974, the Moroccan Supreme Court laid down the principle of the privilege of religion independently of the interpretation given to the previously mentioned law (Dahir of 1959). In another decision on January 11, 1982, the Supreme Court confirmed that the Moroccan law provides for the application to non-Muslim foreigners of their national law in terms of personal status. Necessarily excluded
from the scope of application of the article 3 DCC Muslim foreigners who are in this way governed by Moroccan law.

In the Family Code, the question arises as to whether the solution will be maintained since Article 2, which sets out the scope of the new provisions, does not provide for the hypothesis of the Muslim foreigner. The case law will tell us that. The case law will also rule on the conflict involving Muslim foreigners of different nationalities previously subject to Moroccan Muslim law by religious privilege. The case of the conflict between a Muslim foreigner and another non-Muslim foreigner is also problematic. Article 2 of the new code specifies that its provisions apply in Morocco between two Moroccans, one of whom is Muslim, as stipulated in paragraph 4.

If the solution were to be confirmed, would the case law extend this privilege of religion, initially limited to the Muslim religion, to the Hebrew religion, as seemed to have been understood by the Casa-Anfa Tribunal of 1st Instance in a judgment of January 20th, 1994. Indeed, for this court, non-Muslim and non-Jewish foreigners must be subject to the provisions of the DCC. In other words, it will be subject to Moroccan Hebrew law, the law that implicates a Moroccan of Hebrew faith, and the law report where the law report in which a Jewish foreigner is involved.

C. Conclusion

Our primary goal in writing this paper was to shed light on an experience with a legal system that is less well-known around the world. In 2013, the DCC celebrated its 100th year. Although it has quite a long history, it is still developing steadily. Jurists in Morocco have been giving it much attention throughout the years to see if it is still viable for their times; somehow, it is still inspiring scholars. Making the issues quite complex and complicated regarding the Personal Status of foreigners in Morocco. Nevertheless, the legislation is quite old and amended indirectly or directly by many other legislations. Such a situation creates certain incertitude for the Moroccans and foreigners. Also, it gives much leeway for the judges to interpret the extensive provisions of the old legislation. This goes contrary to the civil law tradition; judges should not move from interpreting law to making them; after all, it is a diverging tradition from the Common Law system.

Personal status and family laws are but the expression of the consciousness of a Nation. It is by definition the most personal field of the law, which might explain the individualism of this matter from country to country. In other words, personal status and family law differ from one place to another, sometimes significantly. All of this makes research in private international law quite exciting and challenging. As we saw when it comes to the personal status of foreigners, the Moroccan private international law opted for the connecting factor of lex patriae. Throughout time some laws have set exceptions to the rule of nationality as a connecting factor, giving application to the lex fori. Last are the rules set by article 2 of the Family Code. Nowadays, it feels as if the field occupied by the exceptions is far greater and more complete than the principle. For this specific reason, we invoked the term "inverse case" in this paper's title.

Our proposal is simple, and it is well time for the Moroccan legislator to assert that the law of the forum is the foundation of the rule to the conflict of law in the sphere of personal status. We do not ask for the DCC to be repealed. It must be understood that Morocco would not drop down the DCC. After all, tradition is an almost sacred element of the Moroccan legal system and society. And the DCC has become part of the legal tradition in Morocco. Yet we must show great ingenuity in amending it and fitting it to our modern times. It needs to be at least coherent and harmonized with the laws that followed it. Considering this legislation's historical weight, we do not want to repeal it. We advise that it be amended to a great deal and maintained in structure as a reminder to any Moroccan jurist of the torment and the struggle.
we have gone through. Further, it will be a model project of the Moroccan spirit, in the motto of "Originality and Contemporaneity".

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