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Understanding of the Sitz Des Rechtsverhältnisses: Based on a Comparative Study of Other Theories of Private International Laws

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Abstract. The current rapid theoretical development of private international law is inseparable from the foundation of the Sitz Des Rechtsverhältnisses laid by Savigny. Derived from the Roman law, the Sitz Des Rechtsverhältnisses and the most significant relationship rules put forward by Reece who critically inherited Savigny's theory both reflect the consistent development of private international law. On this basis, referring to *Geographical and Temporal Scope of Conflict of Laws and Legal Rules (Volume 8th of Modern Roman Laws)* written by Savigny, this paper comparatively analyzes the similarities and differences between the Sitz Des Rechtsverhältnisses and the most significant relationship rules, so as to explore how the Sitz Des Rechtsverhältnisses impacts the contemporary legislation of conflict of laws in the world.

Keywords: Sitz Des Rechtsverhältnisses; Most Significant Relationship Rules; Babcock v. Jackson.

1. Introduction

In recent years, the theory of private international law has developed by leaps and bounds. Internationally, Japan revised its separate private international law in 2016, named the *Act on General Rules for Application of Law*. Panama, Argentina, Indonesia and other countries have enacted new private international law from 2014 to 2015. In 2021, the South Korean National Assembly passed the revised *Private International Law*. At present, more than 90 countries in the world have formulated codes or regulations related to private international law, which indicates an apparent trend of codification from the legislative perspective of private international law in all countries worldwide. Domestically, the *Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships* was officially implemented in 2011, with the Supreme People's Court of the People's Republic of China issuing the latest judicial interpretation in 2022. In addition, as of December 30, 2022, the Supreme People's Court of the People's Republic of China has announced 37 guiding cases, including 9 foreign-related civil and commercial cases.

Up against the rapid development of private international law, various problems emerge in endlessly. Taking China as an example, although *Arrangement of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region*, which was newly implemented on February 15, 2022, has established the recognition and enforcement of marriage and family judgments between the mainland and Hong Kong, it is still unclear to refer to the arrangement to recognize divorce certificates and divorce agreements or memorandums between the two places. Hence, more targeted procedural rules need to be established. Meanwhile, the legislation has also exposed the ambiguous use of some specific concepts.

After consulting the data, it is found that the two most important theories in the theory of private international law with a far-reaching impact are intertwined with the Sitz Des Rechtsverhältnisses and the most significant relationship rules, which has been the research consensus of domestic scholars. But the previous comparative study of these two theories is scarce. Their introduction in China is not profound enough and stays at the conclusion aspect that "the most significant relationship rules are the updates of the Sitz Des Rechtsverhältnisses" without explaining the specific content of

the inheritance and criticism. Meanwhile, due to the large demand for the process analysis of the law application in judicial practice and the insufficient theoretical analysis and interpretation, the current research is mixed, which leads to confusion in readers' understanding and may cause further difficulties in learning.

By combing the development of private international law, this paper makes a comparative analysis of documents and laws from the perspective of historical research. Focusing on the analysis of Savigny's Sitz Des Rechtsverhältnisses known as the "Copernican revolution" for private international law, this paper compares the most significant relationship rules proposed by Reece, observes its influence on formulating conflict of laws in various countries worldwide, and analyzes its application in specific cases.

2. Main Context of the Development History of Private International Laws

2.1 From Ancient Greece to the Young United States: Unchanged Core Values

The written norms of private international law did not appear in large numbers until after the 20th century, which is often regarded as a young branch in the law. However, the theory of private international law came into being as early as the 13th century, and relevant philosophical thinking and habits had been produced in ancient Greece and Rome. Despite that the theory of private international law has been divided into many schools after thousands of years of development, no matter how the formal theory is updated and changed, its core value is still inherited by legal researchers over time. With the social development, it has been continuously enriched and improved.

The historical evolution of private international law can be classified into four stages: the germination of private international law (before the 13th century), the theory of statutes (from the 13th to the 18th century), modern private international law (the 19th century) and contemporary private international law. The former three stages of theoretical development focus on Europe, while contemporary private international law research reflects the trend that the development of the United States is the most vigorous, with other countries in the world catching up with each other. As for the former three stages, the theory of statutes has experienced the respective development of Italy, France, and the Netherlands. Besides, diverse schools have formed the theory of solving international legal conflicts in different capitalist countries during the first industrial revolution to serve capital export and colonial expansion. Nonetheless, the concepts of equality and freedom run through all time, which have been the unshakable core values in private international law.

The principle of equality embodies the rational spirit. The origin of equality for all can be traced back to the Stoic Philosophy in ancient Greece. The universal equality and the natural law theory of this school constitute the basis of its cosmopolitan philosophy. Stoicism emphasizes that equality is involved in the concept of human unity, which transcends region, race, wealth and social status, with all people jointly governed by natural law. This theory also constitutes the theoretical cornerstone for the law of nations in ancient Rome. In the 14th century, the theory of statutes proposed by Bartolus was an internationalism based on nature law, that was, universalism, which distinguished laws according to their nature, studied the applicable principles of human law and material law in bilateral positions, and equally discussed the internal and external effects of state laws. In the 19th century, Savigny's Sitz Des Rechtsverhältnisses was once again premised on universalism, advocating that domestic and foreign laws should be treated equally. Besides, the "sitz (seat)" should be determined based on the pursuit of the "international legal community", and then the substantive law applicable to the case should be clarified, creating an open international judicial system.

Upholding the freedom is mainly reflected in the adherence to the principle of autonomy will. Dumolin, the representative of the French theory of statutes, put forward the principle of autonomy will in the *Comment on Paris Common Law*. He believed that the common law independently chosen by the parties should be applied in the contractual relationship. In modern private international law, the fourth principle of "vested right theory" proposed by Dicey, a representative of the English school, also insists on the principle of autonomy will, which holds that the law chosen by the parties by

agreement has the effect of determining their legal relationship. Now such a principle has been a priority generally accepted by the international community to determine the applicable law of the contract.

Based on the habits formed by the exchanges between ancient Greek states and the analysis of the previous theories by American scholar Stolley, the "classicality" in the evolution of private international law for several centuries or the continuous spirit of natural jurisprudence is imprinted in Western political and cultural concepts.

2.2 Splendid Contemporary Private International Law

The development of contemporary private international law in the 20th century, especially American private international law, can be described as splendid. The different opinions of scholars reflect the pluralistic characteristics of its value.

The "principle of preference" proposed by Carvers prioritizes justice and conformity with the social purposes of the parties. The theory of "government interest analysis" brought forth by Curry is typical and straightforward to show that the application of law is to meet policy needs and interest requirements. The doctrine of the most significant relationship put forward by Reece is committed to seeking the most appropriate law from an objective standpoint.

Various normative theories of conflict of laws are inseparable from the continuous transformation of the world pattern with the end of the two world wars in the 20th century. The gradual establishment of the global multi-polarization pattern of politics and economy has increased the needs of sovereign states and international organizations in foreign exchanges sharply. It is inevitable to establish their own international judicial systems.

3. Sitz Des Rechtsverhältnisses

3.1 Background: Based on the Redevelopment of Roman Law

The Sitz Des Rechtsverhältnisses is put forward in the *System of the Modern Roman Law (Volume 8)* written by Professor Savigny, a famous German private international jurist. The theories mentioned in the book are deeply influenced by Roman law. In addition, the catalog includes related chapters such as "the theory of domicile and hometown in Roman Law". Many of Savigny's theories sought to derive their logical roots from Roman law.

The Sitz Des Rechtsverhältnisses is to find a definite "sitz", the "territory to which the legal relationship belongs in essence", for each legal relationship. Such a territory is distinguished from the concept of domicile. In practice, the doctrine follows the principle that the law of each "Sitz Des Rechtsverhältnisses" should be applied to resolve conflicting cases. Thus, the foundation of Savigny's theory lies in determining the nature of legal relations. So how did Savigny understand the legal relationship? He believed that "the essence of legal relations is defined as a field independently dominated by personal will", whose significance lies in the fact that any right is only a special abstraction described by excluding certain aspects in legal relations, so that the judgment on each right itself can only be true and convincing from the perspective of the legal relationship as a whole. Based on the essence of the legal relationship, the target of the possible functioning will or the object dominated by the will can be divided into three categories: (1) the original self; (2) the expanded self in the family; (3) the outside world. Correspondingly, the three main types of law are family law, real rights law, property law, and debt law (the latter two laws combined can also be called property law).

3.2 Comparison Between the Sitz Des Rechtsverhältnisses and the Most Significant Relationship

The Sitz Des Rechtsverhältnisses was formed in the 19th century. Besides, the doctrine of the most significant relationship was formally put forward in 1971, which runs through the entire content of the *Second Restatement of Conflict of Laws*. According to the academia of private international law,

the theoretical origin of the doctrine of the most significant relationship can be traced back to Sitz Des Rechtsverhältnisses as its critical inheritance.

On the surface, they are both analyzed from the understanding of legal relationships, and then determine the applicable law. Their determination of the applicable law is based on the idea that every legal relationship has a specific suitable law from the time it comes into being, with their goal to find such a law. The Sitz Des Rechtsverhältnisses is to find "the law of sitz", while the "most significant relationship" is to find "the law of the most significant relationship place".

The choice of "sitz" is usually fixed and can be summarized as the domicile of the person involved in the legal relationship, the location of the subject of the legal relationship, the place where the legal act was performed, and the place of the court. Choosing the "most significant relationship place" concentrates on more than two linking factors. Moreover, the "most significant relationship place" of the same legal relationship is not always the same. Because the specific circumstances of the legal relationship in reality are very different and complicated, the specific problems to be solved in each case also vary. Hence, the location with the most significant relationship will not remain unchanged.

From a logical perspective, the two have various understandings of the causes of conflict of laws rules. Savigny believed that the essence of conflict is the domination and obedience of legal rules and legal relations. Only in a scope where a specific legal rule takes effect and conflicts with another group of legal rules that dominate legal relations with a specific effect can a conflict be formed. Thus, "the extent to which particular legal provisions come into force—the distance of the extending provinces— conflict are secondary issues in essence." In contrast, Reece's view is more practical. "The world consists of states with territories, whose legal systems are independent and different from each other. The occurrence of events and transactions, and the generation of problems may be significantly related to more than one state, thus requiring a special set of rules and methods to regulate and determine."

Take the domains of rights in rem and the tort as examples.

As for the rights in rem, Savigny claimed that the jurisdiction of the objects of rights in rem should be determined according to their true nature, and the place occupied by the objects of rights in rem is the base of every legal relationship they participate in. Although the most significant relationship also recognizes that the lex loci rei sitae (the law of the place where the property is situated) governs rights in rem, while Morris felt that the connection of legal relationships is not single and fixed. A comprehensive study of various connecting factors such as public expectations, interests, state interests, etc. Should be carried out to measure them in specific situations according to their importance with the obtained final choice.

As for the tort, the Sitz Des Rechtsverhältnisses has not been discussed much, while that of the most significant relationship has fully developed its application in this field. Savigny proposed that the court of domicile does not have jurisdiction over the infringement, because such jurisdiction is imposed by the violation of the right by negligent violation of the law. However, to protect the legitimate rights and interests of the plaintiff, the plaintiff is given the right to freely choose the court in the infringer's domicile or the court where the infringement occurs. The tort uses lex delicti (the law of the place of the wrong or tort). The above is basically Savigny's theory on the choice of applicable law of tort. Later, British scholars reflected on and evolved this theory. In 1951, Morris introduced it into the domain of tort in *On Proper Law of the Torts*. Reece included the place where the damage occurred, the place where the injury occurred, the party's domicile, residence, nationality, place of incorporation, place of business, and the place where the connection between the parties is most concentrated when a connection between the parties is incorporated into the consideration of "the most significant relationship", making up for Savigny's theory in this regard.

Generally speaking, the Sitz Des Rechtsverhältnisses pursues the consistency of the judgment of the case. In other words, for the same case, no matter where it is accepted, it can point to the same applicable law according to the same connection, and finally get a consistent judgment. However, the mechanical and single idealized classification method of "sitz" is not practical. Facing the increasingly intricate legal relationships produced by the ever-changing modern society, one-size-

fits-all examination of disputes and judgments is essentially the injustice of both parties that may violate the original basic spirit of the law. The doctrine of the significant relationship coordinates the certainty and flexibility of choosing the law to a certain extent, which reflects the fairness and rationality of the value of legal order and justice. At the same time, judges are given a broader space for discretion, which flexibly choose the law based on the spirit of legislation, so as to reach the substantive justice of the final judgment.

3.3 Embodiment of Sitz Des Rechtsverhältnisses in Contemporary Era

The influence of the Sitz Des Rechtsverhältnisses on later generations is not only reflected in the fundamental change in methodology, making private international law return to universalism, which greatly promotes the development of written legislation of private international law in Europe. Besides, it is reflected in its far-reaching impact on the legislation of private international law in contemporary America and Asia, which sheds light on many legal provisions.

1. Rights in Rem

Table:1 Provisions on the Application of Law to Rights in Rem

Country	Name of Provisions	Serial Number	Content Overview
The United States	*Second Restatement of Conflict of Laws*	Article 220	Comprehensively and flexibly choose laws of the place where the subject matter and parties have the most significant relationships.
Japan	*Act on General Rules for Application of Law*	Article 13	Apply to laws of the place where the subject matter is located.
South Korea	*Private International Law*	Article 19	Apply to laws of the place where the subject matter is located.

As mentioned earlier, Savigny supported the determination of rights in rem by lex loci rei sitae and opposed the domicile law to govern rights in rem. According to the table, the general provisions on the choice of applicable law for rights in rem in private international laws of the United States, Japan, and South Korea are basically consistent with his theoretical requirements. The United States has only introduced the consideration that the parties may have a more significant relationship based on the location of the subject matter, which should be different from the choice of applicable law judged solely by the place of parties' domicile.

2. Violations

Table:2 Provisions on the Law Applicable to Tort

Country	Name of Provisions	Serial Number	Content Overview
The United States	*Second Restatement of Conflict of Laws*	Article 145	Comprehensive and flexible choose laws of the place where the event and parties have the most significant relationship, considering the place where the tort occurred, the place where the damage occurred, and the possible place centered on the parties.
Japan	*Act on General Rules for Application of Law*	Article 17	In principle, the law of the place where the infringement occurs shall apply, but if the consequences cannot usually be foreseen in that place, the law of the place where the infringement occurs shall apply.
South Korea	*Private International Law*	Article 32	The principle is to apply the law of the place where the tort occurs, and the exception is to apply other laws.

Savigny made no distinction between the place where the infringement occurred and the place where the result of the infringement occurred. Comparing the legal provisions of Japan and South Korea, it can be found that people nowadays divide the process of "infringement" more carefully. According to the legal provisions of Japan, its legislators pay more attention to determining the facts

of the damage result, while South Korean legislators emphasize the infringement itself. In addition, Savigny's theory puts forward an exception to the application of the law of the place where the tort occurs. In other words, "if a strict positive nature of mandatory law is contrary to the effect of the debt", the provisions of the law of the forum should be applied. At present, the South Korean regulations seem to expand and specify the description of such exceptions, which can be regarded as the inheritance and development of the imperfect torts-related theories in the Sitz Des Rechtsverhältnisses.

There are many similar "legacies" of the Sitz Des Rechtsverhältnisses. Based on a simple enumeration, whether in civil law countries or in common law countries, high-level private international law bills have more or less adopted this doctrine. The continuation of this doctrine by legal articles reflects its spatial-temporal transcendence, which is a valuable wealth left by Savigny to later generations.

4. Theoretical Comparison Based on the Analysis of Babcock v. Jackson

4.1 Statement of the Case

In September 1960, the Jacksons who lived in New York State, USA invited Miss Babcock who lived in the same city to drive with them to Canada. The car is driven by Mr. Jackson. When the car arrived in Ontario, Canada, it suddenly lost control, rushed off the road and crashed into a wall, causing Miss Babcock to be seriously injured. She went to court after returning to New York to demand damages from Mr. Jackson.

Under the laws of Ontario at that time, the owner and driver of the car were not responsible for any loss to the passenger caused by a car accident, except for the carriage of the passenger for profit. However, the law of New York State at the time stipulated that the defendant should be liable to the plaintiff even in this case. On the grounds of the principle that the tort is the lex delicti, the defendant asked the court to apply the law of Ontario and dismiss the plaintiff's claim for compensation. The court of first instance ruled in favour of the defendant's claim, and the plaintiff appealed against it.

4.2 Analysis of Cases Based on the Sitz Des Rechtsverhältnisses

Savigny seemed to have not clearly pointed out the correct way to solve the conflict of laws and specific methods of operation. After his complicated explanation of the abstract theory of the "sitz", it is difficult to apply this principle to the practice of specific cases. Thus, the author tries to use the Sitz Des Rechtsverhältnisses to analyze the above-mentioned cases.

The function of legal rules is to dominate legal relationships. Savigny divided legal relationships into five categories: identity law, property law, debt law, inheritance law, and family law (family relationship law). On this basis, he sought what legal rules to apply to resolve conflicts between different territorial laws. Although Savigny recognized the reality that "because each legal relationship has a different nature, it is almost impossible to obtain the "sitz" of the legal relationship through a common absolute rule". However, from the perspective of usual results of choice, he summarized the choice of the "sitz" of a specific legal relationship into four fixed categories: the residence of the person involved in the legal relationship; the location of the subject matter of the legal relationship; the place where the legal act is implemented; location of the court.

Under the framework of the Sitz Des Rechtsverhältnisses, we can only barely draw a conclusion that the case applies the law of Ontario, Canada.

The establishment of a competent court tends to be in the court where the obligation is performed or occurs, and the court in the place where the debtor's domicile is a passive last choice. Because it originates from the tort itself, this jurisdiction is not voluntary but compulsory obedience to "the direct consequence of the infringement of power due to negligent violation of the law". Nonetheless, "the plaintiff always has a choice between this particular jurisdiction and jurisdiction based on the debtor's domicile." In other words, the plaintiff has a free right to a court of admissibility of his choice.

Thus, Miss Babcock's choice to bring an action in a New York State court is reasonable and permissible under Savigny's theory.

Depending on various circumstances, applicable rules of the local law governing the obligation should be attributed to the place:

I. When there is a definite place of performing the obligation—referring to the place of performance.

II. When the debt arises in the continuous course of the debtor's business—referring to the permanent location of the business conduct.

III. When the debt arises from a single act of the debtor at the domicile— referring to the place of the act and the future change of domicile has no effect on this.

IV. When the obligation arises from a single act of the debtor outside the domicile, but there are circumstances giving rise to the expectation of performance in the same place—referring to the place of the act.

V. When these circumstances do not exist—referring to the domicile of the debtor.

The determination of local law and that of jurisdiction are basically the same. However, as a special kind of debt relationship, the tort debt is always separated with some special restrictions. Thus, the local law governing the obligation cannot be attributed to the option of one party. The core of this statement lies that it is always the nature of the legal relationship that determines what legal rules apply. As for the legal relationship in this case, Miss. Babcock suffered serious personal infringement due to Mr. Jackson's driving negligence, and the tort led to the tort debts. This legal relationship belongs to the branch of Savigny's legal relationship classification. At the same time, it seems that the object of life and health rights that is violated should not be ignored, because Savigny also said that the "center" of every legal relationship should be the party who enjoys rights and interests in the legal relationship". Obviously, this is closely related to the identity relationship, which highlights a problem of Savigny's Sitz Des Rechtsverhältnisses. It simply divides legal relationships according to their nature, which separates the subject, object and content complex of the originally intersecting rights and obligations. As a result, many complex legal relations cannot find a place under this system. As for the rule of law (selection of the "sitz"), the torts in this case can obviously exclude the performance place of the legal act and the place of the court. However, in the first two choices (domicile of the person involved in the legal relationship; place of the subject matter of the legal relationship), why the domicile of the person involved in the legal relationship cannot be regarded as the sitz is not clarified. Savigny believed that the nature of the legal relationship in this case is mainly the relationship of tort debt rather than the relationship of identity (capacity for rights and capacity for conduct), because "the validity of the debt is determined according to the law of the place where it is governed", and the local law of the place where the debt occurs applies. In the end, this "sitz" fell to the place where the subject matter of the legal relationship was located. In other words, in the place where the infringement occurred in this case, Ontario, or the place where the car accident occurred, Mr. Jackson was not responsible. Moreover, Savigny proposed that there is an exception rule in the tort. "If there is a coercive legal opposition of a strict positive law nature in the place where the action is filed", the principle that the tort applies to the local law of the place where the act occurred, then the lex delicti should apply. Although it is regrettable that the law of New York State in this case is not a peremptory norm and cannot apply this exception rule, Savigny's far-sighted discovery paved the way for developing the conflict rules theory in the future.

4.3 Analysis of Cases Based on the Most Significant Relationships

The Second Restatement of Conflict of Laws of the United States has made a relatively complete statement for the most significant relationship rules, with the specific considerations for choosing law listed in Article 6. (1) The needs of the interstate and international system. (2) Relevant policies of the forum. (3) The relevant policies of other interested states and the relevant interests of these states in deciding a particular issue. (4) Protection of legitimate expectations. (5) The policies underlying the law in a particular area. (6) Certainty, predictability and consistency of results. (7) Ease of

determination and application of the law to be applied. The above factors are not in the order of priority, but are different in importance according to the nature of specific cases. After comprehensive consideration, the court should choose the law of the place where it is most significant.

In Babcock v. Jackson, a comparison of the relationships and interests of New York State and Ontario makes it clear that the relationships and interests of New York State in the case are more direct and significant than those of Ontario. From the perspective of the protection of legitimate expectations, Mr. Jackson's tort caused by negligence has damaged Miss Babcock's life and health rights, and the fairness and justice of the law expect to obtain corresponding compensation to protect her legitimate interests. On this basis, if Ontario law were to apply, the protection of legitimate expectations described above would not be achieved at all. Therefore, it is obviously more reasonable to choose to apply the law of New York State, requiring the infringer to compensate the passenger for injury caused by his negligence. The same conclusion can be analyzed from the literal meaning of the "most significant relationship" itself. The car is licensed and insured in New York State. Mr. Jackson, the owner of the car, departed from New York State and took the state as the destination of the trip. The persons involved in the cases are domiciled in New York State. Only incidental torts occur in Ontario, so New York state has a more significant relationship to the case.

According to the traditional conflict rules in the First Restatement of Conflict of Laws published by the United States in 1934, the local law of tort should be applied to the dispute of tort. The Court of First Instance, on which the frivolous decision was made, applied the law of Ontario, Canada, leading to unreasonable results. Flexible use of the "most significant relationship" analysis shows that choosing to apply the law of New York State without rigid application of traditional rules guarantees reasonable and fair results.

5. Conclusion

Based on the above analysis, using the Sitz Des Rechtsverhältnisses and the doctrine of the most significant relationship to analyze individual cases may trigger completely different judgments. In Babcock v. Jackson, Savigny's theory would apply lex delicti. Because "although the court of tort should be established according to different forms of tort debt, the court of the place where the tort occurred is not in doubt." Using the doctrine of the most significant relationship would apply the law of the place of the most significant relationship. On the whole, although the Sitz Des Rechtsverhältnisses has its outdated shortcomings, it is still respected by later generations by virtue of its irreplaceable advantages. On the one hand, looking for a unique "sitz" makes the application of the applicable law rigid, and sometimes it may even be impossible to find the sitz. On the other hand, the proposal of the "sitz" is an innovation and leap in the thinking mode. This "sitz" symbolizes an essential and separate applicable rule, and any legal act with its own sitz should be applied.

When sorting out the development history of private international law, this paper intercepts the Sitz Des Rechtsverhältnisses and that of the most significant relationship, which tries to deepen their understanding through literature analysis and comparative research. The Sitz Des Rechtsverhältnisses is ideal, which advocates that every legal relationship corresponds to a fixed "sitz" in any situation. The doctrine of the most significant relationship is practical. It is necessary to flexibly select the law of the place with the most significant relationship to each case and give judges higher discretion. These two doctrines have different reference significance for the international judicial legislation of various countries in the world nowadays. The research on classic theories will never go out of date. China still needs to distinguish the theories with commonality in more detail, so as to improve their understanding and innovation for further development.

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