

The Characterization of Conflict Rules

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In the realm of Private International Law, there oftentimes arise instances where the applicability of the proper law is at issue. It is during these instances where characterization or the doctrine of qualification is used in order to settle which law shall govern. Characterization, in effect, has been recognized as the process of assigning a disputed question into its correct legal category. The resolution of such question is critical inasmuch as the law of the forum may have a different characterization from that of the law of the place where the act has its closest connection.

In the process of finding the relevant law and the proper application of such a law, the author provides for seven steps to be taken. First, there must be a determination of the facts involved. Second, there must be a characterization of the factual situation. Third, the Conflicts Rule that is to be applied must be determined. Fourth, the Point of Contact or the Connecting Factor must be characterized. Fifth, the problem must be characterized as either substantive or procedural. Sixth, the proper Foreign Law must be pleaded and proved. Lastly, the proper Foreign Law must now be applied to the problem.

Ultimately, the Author emphasizes that the purpose of characterization is to enable the forum or the entity trying the case to effectively select the proper law to be applied.