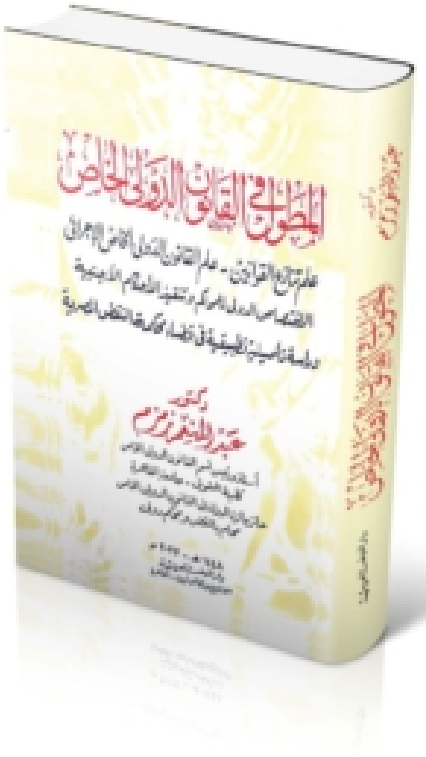
Zamzam on Egyptian Private International Law (in Arabic): Towards Reviving the Golden Age of Egyptian Private International Law



Private international law in Egypt has often been described as being in a state of stagnation. After enormous efforts by the government since the end of the 19th century, and particularly during the beginning of the 20th century, Egypt succeeded in developing a relatively comprehensive PIL framework, covering choice of law (Arts 10–28 of the 1948 Civil Code), international jurisdiction (Arts 28–35 of the 1968 Code of Civil and Commercial Procedure), and the enforcement of foreign judgments (Arts 296–301 the 1968 Code of Civil and Commercial Procedure), alongside other rules scattered across various pieces of legislation. While these rules could be considered relatively modern and well developed, and

broadly in line with the general tendencies of comparative law at the time, they have since become quite outdated and, in many respects, old-fashioned. This, however, has not prevented Egyptian law from exerting considerable influence throughout the region, with more recent codifications often reproducing or adapting Egyptian solutions.

The influence of Egyptian law is due not only to its legislation, but also to the role played by Egyptian scholars in laying the foundations of a genuine Egyptian PIL scholarship. Early treatises were, more often than not, encyclopedic in scope, deeply engaged with comparative law and attentive to judicial practice. In this respect, one may cite the seminal work of Ezzeddine Abdallah, *Al-qānūn ad-Duwalī al-Khāṣ* [القانون الدولي الخاص – *Private International Law*], which consists of two volumes: Volume I, dealing with Nationality, Domicile and the Status of Aliens (1986), and Volume II, dealing with Conflict of Laws and Conflict of Jurisdictions (1986). This work remains, in my view, one of the leading and most authoritative scholarly works in the field.

Slowly, however, the golden age of Egyptian scholarship in private international law entered a period of decline. Much recent scholarship has, more often than not, contented itself with reproducing the work of the great early scholars, while often neglecting the comparative-law dimension from primary sources that was so prominent in those earlier works. Indeed, it is not uncommon for recent publications to refer to existing descriptions of old French case law, to engage in detailed discussions of issues with little practical relevance for Egypt, such as *renvoi*, or to refer to private international law systems that no longer exist, such as those of Czechoslovakia and Yugoslavia. Some also continue to cite, without any particular relevance to the issues under discussion, rather outdated French scholarly works.

More importantly, recent scholarship has generally paid insufficient attention to developments in case law. Rather than systematically examining the more recent decisions of the Egyptian Court of Cassation, despite their relative accessibility, many works continue to rely heavily on older French decisions or on relatively old Egyptian Court of Cassation judgments. This is particularly unfortunate in a field such as private international law, where the practical meaning and development of legal rules can often be understood only by looking closely at how courts actually apply them.

In this regard, the publication of Professor Abdel Moneem Zamzam's book on Egyptian private international law provides a useful opportunity to examine the current state and development of Egyptian law and legal scholarship in this field. Professor Zamzam, who is also Head of the Department of Private International Law at the Faculty of Law, Cairo University, is an outstanding scholar of private international law and international civil procedure, including international insolvency and arbitration, as well as international investment law. He obtained his PhD from the University of Dijon in 2003 with a thesis entitled "Overriding Mandatory Rules in State Courts and International Arbitration: A Comparative Franco-Egyptian Study" (*Les lois de police dans la jurisprudence étatique et arbitrale : étude comparée franco-égyptienne*). The thesis was first published in 2004 by the Atelier national de reproduction des thèses and was republished in 2021 by Éditions universitaires européennes. Professor Zamzam has also published several works in English, notably an article published in 2010 in the *Journal of Private International Law*, entitled "Bankruptcy Jurisdiction and Enforcement of Foreign Bankruptcy Judgments in Egypt".

The book, entitled ***Al-muṭawwal fī al-Qānūn al-Duwalī al-Khāṣ*** **[المطـــول فـــي القانون الدولي الخاص – *The Treatise on Private International Law*] (Dar al-Nahḍa al-ʿArabiyya, 2027)**, revives an old Egyptian tradition of lengthy legal treatises, running to approximately 1,100 pages. It covers the core areas of private international law, namely choice of law, international jurisdiction and the recognition and enforcement of foreign judgments, with particular reference to the case law of the Egyptian Court of Cassation (*Maḥkamat al-Naqḍ* / محكمـــــــة النقض).

The book, kindly made available by the author here for the benefit of Arab PIL scholars and other Arabic-speaking readers, consists of three main parts, preceded by a general introduction.

Part I deals with the general theory of private international law, notably the nature and scope of private international law and its branches (Chap. I), the nature of the conflict-of-laws rule (Chap. II), the application of the conflict-of-laws rule (Chap. III), and disregarding the conflict-of-laws rule and correcting its application (Chap. IV).

Part II deals with the substantive rules of the conflict of laws, notably conflict of laws in personal status matters, or The Principle of the Personal Law (Chap. I),

conflict of laws in immovable and movable property, or The Principle of the Territorial Law (Chap. II), conflict of laws in international contractual obligations, or The Principle of Party Autonomy (Chap. III), and conflict of laws in international non-contractual obligations, or The Principle of the Local Law (Chap. IV).

Part III deals with procedural private international law and is divided into two main sections: the first concerns conflicts of international adjudicatory jurisdiction and the international jurisdiction of Egyptian courts (Chap. I), while the second deals with the recognition and enforcement of foreign judgments (Chap. II).

The book has several notable strengths. First, it builds on the existing literature while proposing a broader treatment of private international law in Egypt, often advancing positions that are original, or at least distinct from those prevailing in Egyptian scholarship. Second, it gives an important place to the case law of Egyptian courts, particularly that of the Egyptian Court of Cassation. Finally, in keeping with the tradition of Egyptian scholarly works, it adopts a comparative-law approach, presenting different approaches in major legal systems.

Despite these strong points, there are also some aspects that could, in my view, be taken into account by the author in future editions.

First, I found it particularly unfortunate that the book pays relatively little attention to private international law in other Arab countries. For instance, when discussing the trend towards comprehensive codifications of private international law, the author refers, inter alia, to the Swiss codification of 1984 and the Italian codification of 1995. Surprisingly, however, he also refers to a number of outdated codifications that have since been repealed and replaced by new legislation, such as the Turkish codification of 1982, which was replaced by new legislation in 2007, the Hungarian PIL Law-Decree of 1979, replaced in 2017, and the Romanian PIL Act of 1992, whose substantive provisions were subsequently incorporated into Book VII of the Civil Code, adopted in 2009 and in force since 2011. He also refers to instruments that, although bearing the title “private international law”, deal essentially with choice of law and therefore cannot properly be regarded as comprehensive codifications, such as the Polish Act of 1965, which was replaced by a new Act in 2011.

Surprisingly, the author does not refer to the Tunisian Code of Private International Law of 1998, despite its being available in both Arabic and French. This could have provided a particularly relevant point of reference for a comparative examination of Arab private international law systems. More generally, this reflects a second aspect that, in my view, deserves closer attention: a more systematic comparative-law approach would have benefited from references to the EU regulations, recent developments in US conflict of laws, and, importantly, the work of the Hague Conference on Private International Law (HCCH), including the more recent conventions and other instruments adopted in areas such as international jurisdiction, the recognition and enforcement of foreign judgments, choice of court agreements, and international family law. It would also have been useful to consider contemporary developments observable in other Arab jurisdictions. These developments are largely overlooked, with the author relying instead on classical references found in classical Egyptian legal literature, together with citations to older French textbooks that have since been substantially revised, updated or, in some cases, ceased to be regarded as authoritative references, except in relation to the historical issues that were relevant at the time of their publication.

Another aspect that deserves attention is the use of the case law of the Egyptian Court of Cassation. The author's effort to identify and discuss relevant cases is certainly to be appreciated. At times, however, the references to the case law appear to be more illustrative than substantive. The treatment of derogative choice-of-court agreements provides a good example. The author cites only two decisions in which the Court of Cassation appears to uphold the validity of such agreements. A closer examination of the available case law on the issue, however, reveals a considerably more complex picture, and one that does not necessarily support the author's position in favour of derogative choice-of-court agreements. It is also unfortunate that some recent decisions, including cases reported on this blog (here, here, here, here, and here) together with the relevant references to the case law, as well as other useful and more recent sources, have not found their way into this latest contribution to Egyptian private international law.

A third point, and in my view the most important one, concerns the history of Egyptian private international law, which is almost entirely overlooked in the book, as if its development had begun only in 1948 with the adoption of the Egyptian Civil Code and the set of private international law rules contained

therein. A historical approach to Egyptian private international law, however, would reveal the broader context in which the present rules were developed, the tensions surrounding their adoption, the extraordinary work undertaken by the early scholars, and, above all, the important role played by the case law of the Mixed Courts in shaping the Egyptian private international law that we know today.

These comments may appear critical, but my intention is simply to express the hope that the tradition of the classical authors, who through meticulous comparative research combined with close attention to judicial practice succeeded in bringing Egyptian private international law to a remarkably advanced level for its time, can be revived. In this sense, the challenge today is not merely to describe the current state of Egyptian private international law by largely reproducing the prevailing literature, but to build on the foundations laid by earlier generations while engaging seriously with contemporary comparative developments and the evolving case law of Egyptian courts. If Egyptian private international law is to regain the dynamism and intellectual ambition that characterised what might be described as its golden age, future editions could benefit from a broader comparative perspective, more systematic and substantive engagement with the case law of Egyptian courts, including the Court of Cassation, and greater attention to the historical experiences that have shaped the present system. Such an approach would not simply document the current state of Egyptian private international law; it could also contribute to reviving the golden age of Egyptian private international law and laying the foundations for its further development.

Despite the above comments, the book remains an important contribution to the field and a valuable addition to the literature on Egyptian private international law. It provides a comprehensive account of the current state of Egyptian PIL and, importantly, brings together the relevant statutory provisions, doctrinal debates and judicial developments in a single work. I hope that it will stimulate further discussion and research and, in future editions, contribute even further to the renewal and development of Egyptian private international law.