

cause they are a matter involving state sovereignty); nor will foreign penal provisions (because they are ordinarily territorial in scope).

The vested rights doctrine is the traditional device used by codes to determine the choice of law, but it is not the only mechanism. In recent years, many civil law countries have modified their choice of law rules in response to objections that the vested rights doctrine is too rigid and fails to reflect the true interests of the states whose law may or may not be applied. The great majority of states have adopted the “most significant relationship” doctrine. Others have turned to the “governmental interests” doctrine.

MOST SIGNIFICANT RELATIONSHIP

most significant relationship doctrine: Doctrine that courts should apply the law of the state that has the closest and most real connection with the dispute.

The **most significant relationship doctrine** has a court apply the law of the state that has the most “contacts” with the parties and their transaction. General factors that the courts will consider in all cases are (in essence): (1) Which state’s law best promotes the needs of the international system? (2) Which state’s law will be furthered the most by applying it to the case at hand? and (3) Which state’s law will best promote the underlying policies of the legal subject-matter area involved?²¹²

In addition, a court should consider “specific” factors, depending on the kind of case that is before it. For tort cases, the specific factors are (1) the place of injury; (2) the place of the act; (3) the nationality, domicile, residence, or place of incorporation of the parties; and (4) the place where the relationship between the parties was centered. For personal property cases, these are (1) the location of the property and (2) the nationality, domicile, residence, or place of incorporation of the parties. For real property cases, the specific factor is the location of the property. For contract cases, the specific factors are (1) the place of contracting; (2) the place of negotiation; (3) the place of performance; (4) the location of the subject matter; and (5) the nationality, domicile, residence, or place of incorporation of the parties.

The most significant relationship doctrine was applied in the next case.

²¹²This doctrine is adopted in *The Second Restatement of Conflict of Laws*, 1971. The following “general” factors are considered by a court applying this doctrine: (1) The application of which state’s law will best promote the needs of the international legal system for harmony in the political and commercial relations of states? (2) Will the purpose of the forum state’s own law be furthered by applying it to the particular case? (3) Will the purpose of the other states’ law be furthered by applying it to the particular case? (4) If a contract is involved, which state’s law will best advance the legitimate expectations of the parties? (5) The application of which state’s law will best promote the underlying policies of the legal subject matter (e.g., torts, contracts, etc.) involved? (6) Which state’s law will best promote certainty, predictability, and uniformity of result? (7) Which state’s law is easiest to determine and apply?

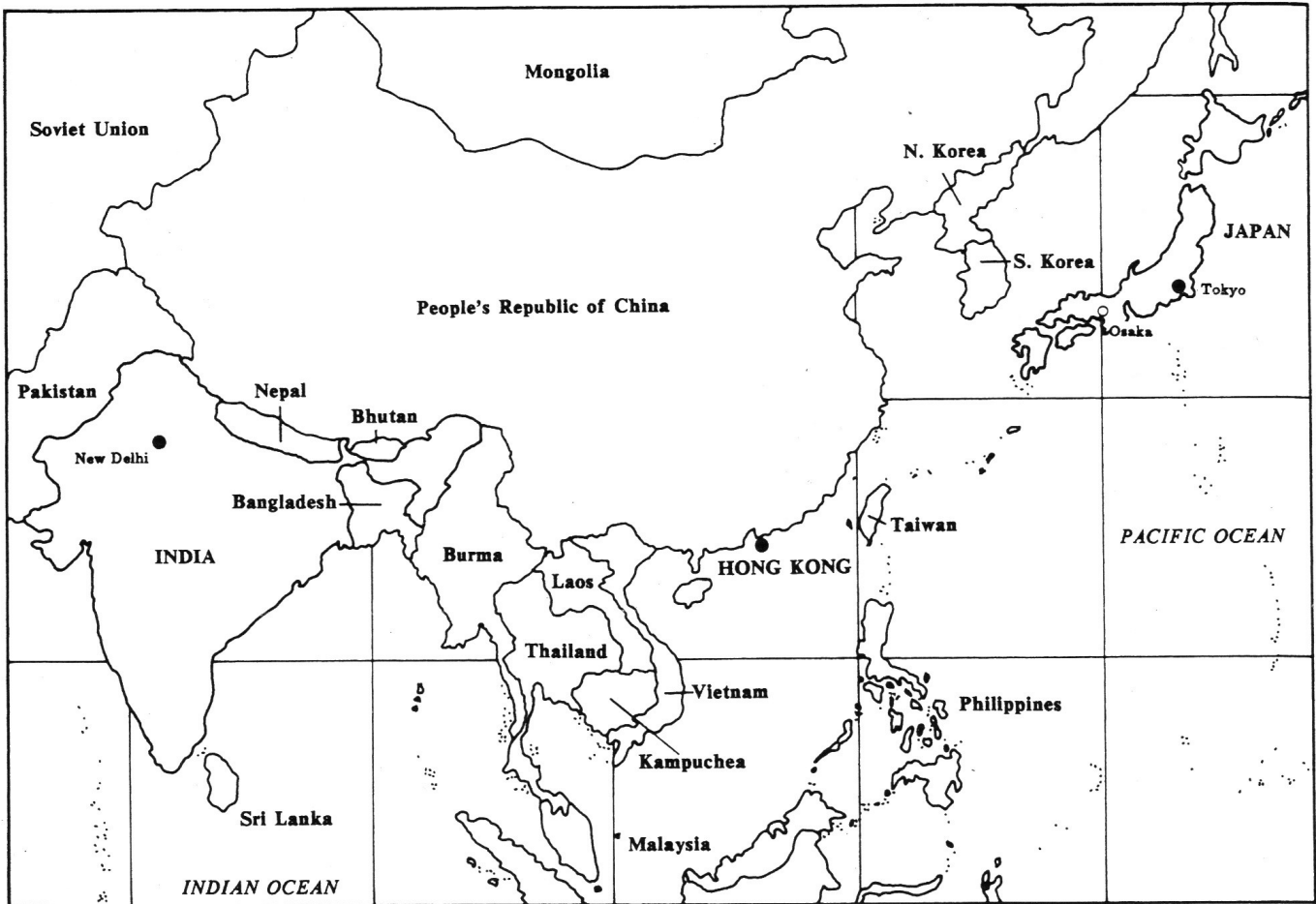
CASE 3-10

Bank of India v. Gobindram Naraindas Sadhwani and Others

Hong Kong, High Court, 1982.
Hong Kong Law Reports, vol. 2, p. 262 (1988).

The Bank of India (the Bank) initiated this suit against Gobindram Naraindas Sadhwani and his wife (the Gobindrams), who had acted as guarantors of a line of credit of 230,000,000 Yen the Osaka branch of the Bank had provided Sadhwani (Japan), Ltd. (SJL). The Gobindrams were residents of Hong Kong. The Bank was an Indian corporation and its head office

was in Bombay. It had a regional office in Tokyo and a branch office in Osaka, Japan. SJL, which carried on business in Osaka, was managed by Mr. Gobindram’s brother, Kishinchand Naraindas Sadhwani (Mr. Kishinchand), who lived with his wife near Osaka. The Kishinchands owned 60 percent of SJL and the Gobindrams the remaining 40 percent. SJL had drawn bills of exchange that were supposed to have been paid by corporations in Sri Lanka and Nigeria that were run by other brothers of Mr. Gobindram and Mr. Kishinchand. When



the bills were dishonored, the Bank sought payment from Mr. Kishinchand, only to be told by Mr. Kishinchand that it should pursue the Hong Kong guarantors, the Gobindrums. The Bank did not care to sue the Gobindrums because, sometime before the bills of exchange had been drawn, the Bank had agreed to release the Gobindrums as guarantors. After the Bank obtained a provisional attachment of Mr. Kishinchand's property interests in Japan from the Japanese courts, Mr. Kishinchand went to the Bank's head office in Bombay and offered to bear all legal costs if the Bank would pursue its claims against the Gobindrums as guarantors and the Sri Lankan and Nigerian corporations as drawees of the bills of exchange. The Bank then sued the Gobindrums in Hong Kong, their place of residence. The Gobindrums in turn brought the Kishinchands into the proceeding as third parties.

At trial the Gobindrums argued that the proper law governing the guarantee contract was Japanese law and that Japanese law excused them from liability because the Bank had agreed to release them as guarantors. The Bank argued that either Indian or Hong Kong law should apply.

JUDGE NAZARETH: . . .

Determination of the Proper Law: The Test to Be Applied The major issue between the parties is whether or not Japanese law is the proper law of the contract, i.e., the guarantee. The defendant contends for Japanese law in reliance upon the test of closest and most real connection. The plaintiff on the other hand contends otherwise in reliance upon the second of the three-stage or subrule test propounded thus in Dicey and Morris' *The Conflict of Laws*:

Rule 180: The term "proper law of a contract" means the system of law by which the parties intended the contract to be governed, or, where their intention is neither expressed nor to be inferred from the circumstances, the system of law with which the transaction has its closest and most real connection.

Subrule 1: When the intention of the parties to a contract, as to the law governing the contract, is expressed in words, this expressed intention, in general, determines the proper law of the contract.