

Legal Gap Regarding the Governing Law of Engagement in Algerian Legislation: What is the Solution?

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Abstract:

Engagement, as a step toward marriage, presents complex issues in private international law, particularly regarding which country's law applies. Algerian law does not provide clear rules for determining the applicable law in engagement cases involving foreign elements. This legislative gap requires reliance on legal characterization and general principles of private international law to resolve such matters.

Keywords: Engagement conditions; breach of engagement; conflict-of-law rule; legal characterization; private international law principles.

1. INTRODUCTION

Engagement in the field of private international law gives rise to several legal dilemmas that intersect with the foundational aspects of this branch of law. Private international law governs legal relationships involving foreign elements by

identifying the subjects involved, regulating their legal capacities, and determining the enforceability of their rights **(Zerouti T, 2008, p. 10)** .

Among the key issues is the matter of applicable law, which arises when there is a conflict between multiple legal systems issued by different jurisdictions that all claim competence over the same matter **(Fadhel, N, 2006, p. 08)**. In the context of globalization-whether through real-life interactions or via digital communication channels of the third industrial revolution-it is not uncommon for individuals of different nationalities and cultural backgrounds to enter into relationships that may lead to engagement and, possibly, marriage.

Given the sanctity of marriage in most legal systems and the desire to avoid future complications that could lead to its dissolution, parties often prefer to begin with a preparatory phase known as engagement. This phase allows for mutual understanding of each other's traditions, beliefs, and lifestyle compatibility-especially when there are significant cultural, religious, or civilizational differences.

During this period, it is common for couples to strengthen their bond by exchanging gifts or, in some cases, for the suitor to provide a dowry to the fiancée to help her prepare for the wedding. They may also agree on certain conditions to ensure the eventual marriage. However, engagement does not always culminate in marriage. A party may unilaterally terminate the relationship, causing emotional or financial harm to the other.

Addressing such situations requires identifying an applicable conflict-of-law rule that governs the formation and dissolution of engagement, including its legal consequences.

Yet, the Algerian legislator remains silent on this issue, offering no guiding rule. This omission compels legal practitioners to rely on two mechanisms: legal characterization of engagement and the application of general principles of private international law.

This study thus aims to explore practical solutions to overcome the legislative gap in Algerian law regarding engagement in international contexts. It seeks to determine the applicable legal framework that governs not only the conditions for a valid engagement but also its termination and the resulting legal effects.

To achieve this, the study addresses the central research question: What mechanisms can be employed to address the legislative vacuum affecting engagement in the area of legislative jurisdiction?

The methodology adopted combines descriptive and analytical approaches. The descriptive method helps provide a thorough conceptual framework for the subject matter, while the analytical method facilitates the examination of relevant legal doctrines and legislative texts. Moreover, a comparative approach is employed by reviewing the legal systems of other Arab countries that have addressed similar issues in their statutes.

Based on these methods, the study is divided into two main sections: the first examines the problem of identifying the applicable law governing the conditions of engagement in Algerian legislation, while the second focuses on the legal

effects arising from engagement and the applicable governing law.

2. Addressing the Issue of the Governing Law for Engagement Conditions in Algerian Legislation

Engagement represents a pivotal phase in the lives of both parties involved. It enables each to gain preliminary insight into the other, forming a foundational understanding ahead of marriage. Given its significance, certain conditions must be met during this stage, which are inherently linked to the subsequent marital phase. While no legal ambiguity arises when both parties are nationals of the same country-where the applicable law is simply the domestic legal system-the situation becomes complex when a foreign element is introduced. In such cases, one party's national law may object to the engagement or prospective marriage due to incompatibility with public order principles (Marino, S., & Gonzales, J.C., 2024, pp. 221-240).

To overcome this complexity, it is essential to identify the law governing both the substantive and formal requirements of engagement. This subject therefore proceeds in two sections:

- **Section 1** addresses the applicable law governing substantive conditions of engagement in Algerian law.
- **Section 2** discusses the law governing its formal conditions.

2.1 Governing Law for the Substantive Conditions of Engagement in Algerian Legislation — A Legal Gap to Be Filled.

In the absence of specific legislative guidance on the law applicable to the substantive requirements of engagement, two

mechanisms must be employed. The first involves the legal characterization of engagement; the second entails applying general principles of private international law.

2.1.1 Legal Nature of Engagement as a Mechanism to Determine the Applicable Law for Its Substantive Conditions.

The wide variety of legal issues that arise in practice makes it unfeasible to create a conflict-of-law rule for every individual case. In response, many legal systems-including Algerian law-resort to the concept of "reference categories" or "connecting legal groups." This technique clusters related legal issues under broader categories, assigning them a particular governing law via a connecting factor (**Aarrab, B., 2008, p. 83**).

The Algerian Civil Code follows this approach. In Book I, Chapter II, titled Conflict of Laws in Terms of Place (Articles 10–20), the law sets out five major reference categories (**Law No. 75-58**). When a conflict arises, these serve as the legal anchor points to determine the applicable law. When no category expressly includes the issue at hand, legal reasoning must be employed to incorporate the matter into the most analogous category-avoiding the risk of a "denial of justice."

This necessitates a process known as legal characterization-the classification of the issue according to its legal nature to assign it to the proper conflict rule (**Belmami, O., 2008, p. 133**). According to Article 9 of the Algerian Civil Code, characterization is governed by the *lex fori*, or the law of

the forum (i.e., Algerian law). Therefore, establishing the legal nature of engagement in Algerian law is the first step toward identifying the applicable rule of reference.

Unlike many Western legal systems that treat engagement as a contractual agreement, Algerian law-guided by Islamic principles and codified in the Family Code-treats engagement as a promise to marry (**Ordinance No. 05-02**). It is not a binding contract but rather a preliminary stage in matters of personal status (**Suleiman, A.A., 2005, p. 68**). These matters define the individual's legal identity and family position, and are governed by their personal status law.

As such, engagement does not fall under the scope of contractual obligations (Article 19 of the Civil Code) and is not governed by the law of the parties' will (as seen in the systems of England, Germany, and the Bustamante Code) (**Suleiman, A.A., 2005, p. 68**). Instead, the applicable law is determined by the parties' national laws, consistent with Algerian legal tradition. The most appropriate connecting rule, therefore, is the same as that applied to marriage.

This brings us to Article 11 of the Algerian Civil Code, which governs the substantive conditions of marriage and, by extension, should be applied to engagement. Exceptionally, Article 13 may also be invoked depending on the situation.

According to Article 11, the substantive conditions of engagement are governed by the national laws of both parties. If the parties share the same nationality (**Oukacha, M.A., 1997, p. 455**), the matter is simple: the shared national law applies (**Dawoudi, G.A., 2011, p. 168**), unless it contravenes Algerian public policy (*ordre public*). However, when the

parties have different nationalities, the issue becomes more complex.

To resolve this, legal scholars and courts distinguish between two types of substantive conditions:

- ❖ Individual (personal) conditions, such as legal capacity, are assessed separately for each party (**Sadiq, H.A. & Haddad, H.S., 1999, p. 273**) under their respective national laws—a method known as *dépeçage* or split application. For example, the suitor's eligibility is judged under his national law, and the same for the fiancée under hers.
- ❖ Joint (mutual) conditions, which serve broader social interests—such as the absence of legal impediments—must be satisfied by both parties under both national laws (cumulative application) (**Suleiman, A.A., 2006, p. 69**). A single legal barrier in either law invalidates the engagement. For example, an engagement between a Christian man and a Muslim woman may be deemed invalid if the law of one party prohibits interfaith engagements, which may, in turn, render the eventual marriage void—particularly in countries where family law is derived from Islamic jurisprudence.
- ❖ Moreover, where one of the parties holds Algerian nationality, the substantive conditions default to Algerian law. However, Article 5 of the Algerian Family Code does not explicitly define the conditions of engagement. Consequently, Article 222 refers such matters to Islamic law (Sharia).

Under Sharia, substantive engagement conditions include:

- ❖ Preferred conditions (e.g., absence of familial ties between the parties) **(Daoudi, A.Q., 2010, p. 32)**,
- ❖ Mandatory conditions, such as the woman being legally free to marry (not already engaged or in a waiting period).

As stated in the Hadith of the Prophet Muhammad (peace be upon him):

- ❖ A man must not propose to a woman who is already engaged to his brother until the first suitor marries her or withdraws." **(Narrated by Al-Bukhari)**
- ❖ It is worth noting that Article 13 of the Civil Code, while establishing exceptions, does not apply to the foreign party's legal capacity, which is still governed by his or her national law, pursuant to Article 10.

2.1.2 Principles of Private International Law as a Mechanism for Determining the Law Governing the Substantive Conditions of Engagement.

The principles of private international law refer to the most widely recognized and established norms not only within Algerian legal doctrine, but also across various other legal systems **(Zerouti T, 2008, p. 48)**. These principles serve as an auxiliary mechanism to address legal gaps where no specific conflict-of-law rules exist concerning cross-border or foreign-element private relationships.

Despite their foundational role, Algerian legislation-prior to the 2005 amendment of the Civil Code-did not explicitly incorporate such principles within the section dedicated to conflict of laws. This legislative gap was eventually recognized through persistent academic advocacy, resulting in their

inclusion by virtue of Ordinance No. 05-10. Specifically, Article 23 bis 2 was introduced, stipulating that principles of private international law constitute a legitimate source to be applied in the absence of specific legal provisions governing conflict of laws.

It is worth emphasizing that these principles are given precedence over natural law and equity rules referenced in Article 10 of the same code, due to their stronger relevance and alignment with the structure of private international law. However, these principles may only be invoked after exhausting all primary legal sources, including international conventions, domestic legislation, and customary law.

In the context of engagement, and through this interpretative tool, the applicable law for determining the substantive conditions may be inferred based on prevailing rules found in comparative legal systems. Notably, the Kuwaiti Law on Private Relations (**Law No. 5 of 1961**) explicitly categorizes engagement under personal status matters in Article 35, and assigns the applicable law governing its validity to the national law of each party, effectively sidestepping the complications arising from parties holding different nationalities. This reflects a form of split application as the general approach.

Similarly, the Qatari Civil Code (**Law No. 22 of 2004**) has addressed engagement within the context of private international law through Article 18, treating engagement as subject to the same legal framework that governs marriage-including its substantive conditions. Article 13 of the Qatari

Civil Code reiterates the same logic applied in Algerian law through Articles 11 and 13. Specifically, substantive conditions such as valid consent and absence of legal impediments are governed by the national law of each spouse at the time of marriage. Furthermore, if one of the parties is Qatari, Qatari law will apply by default, thereby offering protection to the national party in the engagement.

The practical outcome of adopting such rules is that the substantive requirements of engagement are governed by the respective national laws of both parties at the time of the engagement. However, where one of the parties holds Qatari nationality, Qatari law shall apply as a matter of legal priority-except in matters of legal capacity, which remain governed by the personal law of the foreign national.

From the above, it is clear that both mechanisms-legal characterization and principles of private international law-lead to the same result regarding the law governing the substantive conditions of engagement. Thus, either approach may be validly employed to resolve the legal uncertainty in Algerian legislation.

2.2 Governing Law for the Formal Requirements of Engagement.

Engagement, while not creating a binding marital contract, nonetheless serves as a prelude to marriage and carries legal and social implications. As such, its formal requirements are subject to conflict-of-law rules, which aim to determine the applicable law when different legal systems intersect. This section explores the legal framework regulating the form of engagement, particularly within the Algerian legal

system, while integrating comparative insights from other jurisdictions.

2.2.1 The Application of Algerian Conflict-of-Law Rules to Engagement.

Engagement, as a promise to marry, is subject not only to substantive requirements but also to formal ones. These formal elements, like their substantive counterparts, fall under the conflict-of-law rules applicable to marriage-specifically concerning its form. Upon examining the relevant rules in the Algerian legal framework, it becomes apparent that the sole conflict-of-law rule addressing the form of legal acts is found in Article 19 of the Civil Code. This article regulates legal acts in general, without specifying particular acts, such as marriage or engagement. As a result, legal scholars have extended its application to include the formal requirements of marriage, which is treated as a legal act. Accordingly, it is governed by one of the Following :

- The law of the place where the act is concluded (*lex loci actus*),
- The common domicile of the parties,
- Their shared nationality, or.
- The law governing the substantive conditions of the marriage.

A deeper analysis of the conflict-of-law rules also reveals Article 21, which provides that the rules on conflict of laws apply only in the absence of a specific provision in domestic law or an applicable international treaty. In practice, Articles 95 and 97 of the Algerian Civil Status Law govern the formal

validity of marriages celebrated abroad between Algerian nationals and foreigners. These provisions reaffirm the well-known Latin maxim *locus regit actum* (the place governs the form), assigning the act's validity to the law of the place where it is performed. Applying this reasoning to engagement-viewed as a preliminary stage leading to marriage-suggests that its formal requirements should follow the same conflict rules applicable to the formalities of marriage. Therefore, the following connecting factors may be used to determine which law applies:

- The law of the place where the engagement is made,
- The law of the parties' common domicile,
- Their shared nationality, or
- The law governing the engagement's substantive conditions (El Harras, Saidani, & Ait Mansour, 2024, p. 102).¹

2.2.2 The Role of Custom and Comparative Approaches in Determining Formal Validity.

If any of these connecting factors point to Algerian jurisdiction, Algerian law becomes applicable. However, Algerian legislation-specifically the Family Code-does not lay out specific formal requirements for engagement. This omission is likely due to the diversity of local traditions and customs across Algerian regions, which shape the ceremonial practices associated with engagement. Therefore, such

¹ "The legal systems in the Maghreb, especially Algeria, apply the principle of *locus regit actum* when determining the formal validity of marriages concluded abroad. This reflects the broader reliance on place-of-act rules in absence of more specific domestic provisions."

formalities remain subject to customary norms and social traditions.

Given that Algerian law does not mandate a specific form for engagement, it is deemed valid if it adheres to **(Bendjeddou, M., 2020, pp. 45-68)**:

- The customary or legal procedures of the country where it took place,
- The formalities recognized by either party's national law, or
- The common domicile's legal traditions.

From a comparative law perspective, legal characterization serves as the rationale for applying the same conflict rules that govern marriage formalities to the engagement stage. However, the application of private international law principles and reference to comparative legal systems leads to the same conclusion.

For instance, Article 18 of the Qatari Civil Code subject's engagement to the same legal rules that govern marriage. When read in conjunction with Article 14, which addresses marriage formalities, the law applicable to the formal requirements of engagement may be:

- The law of the place where the engagement occurred,
- The national law of each party, or
- The law of their shared domicile.

Whether through legal characterization or the application of comparative and international legal principles, the formal conditions of engagement are best governed by the same connecting factors applicable to marriage formalities—

particularly the law of the place of performance, shared domicile, or nationality. This ensures flexibility and legal consistency in cross-border situations.

3. Governing Law for the Legal Effects of Engagement.

Engagement is a promise to marry, and as such, it can either be fulfilled-culminating in marriage-or terminated due to a breakdown in the relationship. In both scenarios, distinct legal effects arise: those that precede a withdrawal from the engagement, and those that follow it. Given the importance of these consequences, this subject is divided into two main sections:

- **Section 1:** The law governing the legal effects of engagement prior to withdrawal,
- **Section 2:** The law governing the effects resulting from the withdrawal from engagement.

3.1 Governing Law for the Effects of Engagement Prior to Withdrawal.

Determining the applicable law in this context requires first identifying how to overcome the absence of a conflict-of-law rule addressing the effects of engagement before withdrawal (Subsection 1), followed by an exploration of the scope of such effects (Subsection 2).

3.1.1 Mechanisms for Overcoming the Absence of a Conflict-of-Law Rule Governing the Legal Effects of Engagement Prior to Withdrawal.

Despite the potential significance of the effects arising during the engagement period-especially within the realm of

private international law-Algerian legislation has not expressly addressed this issue. This legal vacuum becomes particularly problematic when disputes arise involving foreign elements, where it becomes necessary to determine the governing law.

To resolve such cases, Article 23 bis 2 of the Algerian Civil Code serves as a legal fallback. This provision allows for the application of principles of private international law when no specific rule exists concerning conflict of laws. These principles are derived from common features shared by multiple national legal systems and are applied internationally when no clear treaty, statute, or customary rule governs the issue.

In light of this, relying on private international law principles becomes the most effective and legitimate method for resolving the legislative gap surrounding the legal effects of engagement prior to its dissolution. These principles provide the legal reasoning framework necessary to identify the appropriate governing law and ensure legal certainty in cross-border matters **(Oulehi, M., 2024, p. 177)**.

Notably, Kuwaiti law, in Article 35 of the Law on Legal Relations Involving Foreign Elements, assigns the law applicable to the effects of engagement prior to withdrawal to the nationality of the fiancé at the time of engagement.

Similarly, Qatari law treats engagement as part of the broader legal regime governing marriage, assigning the applicable law-by default-to the nationality of the fiancé at the time of engagement, unless the parties acquire a shared

nationality after the engagement, in which case their common nationality governs (**Law No. 22 of 2004**).

The term “fiancé” as used in these texts has sparked debate. Traditionally, it refers to the male party in Arabic usage. However, to uphold gender equality-and in line with Islamic jurisprudence, which recognizes a woman’s right both to propose and to withdraw from engagement-the term should be interpreted neutrally, encompassing both male and female parties.

Furthermore, the law to be applied is frozen at the time of engagement, and any subsequent change in nationality does not affect the applicable legal regime. This approach aims to avoid the problem of mutable connecting factors, which can create instability when the applicable law changes between the formation of a right and its judicial enforcement (**M'Hend, I., 1989, p. 256**).

3.1.2 Scope of the Law Governing the Effects of Engagement Before Withdrawal.

Once the appropriate governing law is determined, it becomes necessary to define the scope of its application. Where the applicable law is Algerian, the Family Code is the primary source. However,

Its coverage is limited: Article 5 addresses only the non-binding nature of engagement, without elaborating on its broader effects.

Consequently, recourse must be made to Islamic law, as stipulated in Article 222 of the Family Code. According to Islamic legal tradition, the pre-withdrawal effects of engagement include:

- The fiancé's right to see the prospective spouse, within lawful boundaries,
- The prohibition of seclusion (khalwa) unless accompanied by a lawful guardian,
- The requirement to observe moral conduct and public decency,
- The prohibition of engaging someone already engaged, as stated in the Prophet's Hadith (**Belhadj, A., 1999, p. 49**), in order to respect the rights and emotional expectations of the initial suitor.

3.2 Governing Law for Withdrawal from Engagement and Its Consequences.

Withdrawal from engagement gives rise to various legal consequences—some intended to protect the interests of the fiancé (First), and others aimed at safeguarding the party harmed by the withdrawal (Second). Given the relevance of this issue to legislative jurisdiction and its close connection to identifying the most appropriate law among competing legal systems, each aspect will be addressed in turn.

3.2.1 Governing Law for the Act of Withdrawal.

Withdrawal from engagement is a legal right granted to both parties when mutual agreement to proceed with marriage fails. Since this is an international legal relationship involving a foreign element, the governing law must be clearly determined.

As previously established, Algerian law does not treat engagement as a contract, but as a non-binding promise to marry. In legal systems where engagement is considered a

contract, withdrawal is treated as contractual non-performance, subject to contract law. In contrast, in systems like Algeria's, where engagement lacks contractual force, withdrawal is governed by the law applicable to its specific nature⁶namely, the national law of the withdrawing party at the time of withdrawal.

This interpretation is consistent with the principles of private international law, and is explicitly adopted by Article 35 of the Kuwaiti Law on Foreign Relations. Nevertheless, this provision has been criticized for undermining gender equality, as it appears to favor the male party (fiancé).

To address this imbalance, legal scholars have advocated a broader interpretation of "withdrawing party" to include both fiancé and fiancée, given that both have equal standing under substantive laws (**Salama, A.A., 1966, p. 766**). Furthermore, in cases of conflicting laws, the most closely connected law-that of the withdrawing party at the time of withdrawal-should govern the act, as it offers the most immediate relevance to the dispute.

This recommendation also aligns with Algerian legal values, particularly Article 5 of the Family Code, which upholds gender equality and grants both parties the unilateral right to withdraw from engagement.

3.2.2 Governing Law for Legal Consequences After Withdrawal.

In the event that the fiancé and fiancée fail to reach an agreement during the engagement period, each party is granted the right to unilaterally withdraw from the engagement. Given that the relationship in question is a private international one involving at least one foreign party, it becomes necessary to

examine the law applicable to such withdrawal (Section One), followed by the law governing the legal consequences resulting from that withdrawal (Section Two).

1) Effects Protecting the Fiancé

One primary issue is the return of the mahr (dowry). Although dowry is traditionally linked to marriage, it is often paid during engagement to help the fiancée prepare. If the engagement ends, questions arise about the right to recover it.

To resolve this, the legal characterization of the dowry must be determined. Under Algerian law, dowry is a condition for a valid marriage, as per Article 9 bis of the Family Code. Since engagement does not result in marriage, retaining the dowry may constitute unjust enrichment. Therefore, Article 20 of the Civil Code applies, designating the place of the enriching act as the governing law-even if the enrichment and impoverishment occur in different locations **(Sadiq, H.A. & Haddad, H.S., 2001, p. 492).**

Thus, if the dowry was given in Algeria, Algerian law applies. In the absence of a marriage contract, no right to retain the dowry exists, and it must be returned. Since Algerian law does not regulate the return of dowry in such cases, Islamic jurisprudence must be consulted under Article 222. Most modern jurists, except the Hanafis, argue that mahr is conditional on marriage, and must be returned if no marriage occurs **(/WWW.aliftaa.jo)**. Retention is considered unjust, and full restitution is required.

Some Arab countries, such as the UAE and Kuwait, explicitly regulate this issue: they permit the fiancé to reclaim

the dowry or its value, or allow the fiancée to return its equivalent in purchased goods.

2) Applicable Law Governing Gifts Exchanged During Engagement:

Practical reality has shown that during the engagement period, couples often exchange gifts as a means of strengthening emotional bonds. They may also make significant personal sacrifices-sometimes even forgoing rare opportunities-in the belief that the engagement will ultimately lead to a legally recognized marriage, a relationship highly valued in both religious and civil legal systems. However, when one party withdraws from the engagement, the situation changes, and these sacrifices often become sources of legal dispute. Given the complexity of this issue in the context of private international law, it is essential to examine it from two angles: first, the law applicable to the return of gifts, and second, the law governing compensation for damages resulting from the withdrawal.

a) The Applicable Law Governing Gifts:

Under Article 5 of the Algerian Family Code, gifts exchanged during the engagement period must be returned in the event of withdrawal. In strictly domestic situations, the application of this substantive rule poses no legal difficulty. However, when the engagement involves an international element, determining the appropriate conflict-of-law rule becomes essential.

Given the legislative gap in Algerian private international law regarding this matter, the issue can only be resolved through a process of legal characterization. Specifically, the gift exchanged during engagement cannot be classified as a

donation (hiba) in the legal sense. This is because the rules governing the revocation and return of gifts differ significantly from those applicable to donations.

While Algerian law allows either party to withdraw from the engagement and recover the gifts exchanged, it does not permit the revocation of donations except under very limited circumstances-withdrawal from engagement is not one of them. Therefore, Article 16 of the Civil Code, which assigns the governing law of donations to the nationality of the donor, is not applicable in this context (**Dawoudi, G.A., 2011, p. 168**).

Instead, the return of gifts following the dissolution of engagement is generally viewed through the lens of unjust enrichment. The rationale is that retaining such gifts without proceeding to marriage results in enrichment without legal cause at the expense of the donor, who becomes impoverished.

For this reason, the prevailing legal opinion holds that such situations are governed by the law of the place where the act giving rise to the obligation occurred, as stipulated by Article 20 of the Algerian Civil Code. This aligns with the general conflict rule applicable to non-contractual obligations. Accordingly, the law of the country where the enriching act (i.e., the giving and subsequent retention of the gift) took place should govern the matter, not the common national law of the parties, as suggested by some alternative views in legal scholarship (**Dawoudi, G.A., 2011, p. 168**).

**b) Applicable Law Governing Compensation for
Damages Resulting from Withdrawal from
Engagement:**

Algerian legislation grants both parties the right to withdraw from an engagement if it becomes clear that they cannot proceed to marriage. To mitigate the impact of this decision, particularly where one party suffers material or moral harm, the law provides for the possibility of claiming compensation.

There are numerous grounds for such compensation claims, including:

- The failure of one party to attend the scheduled marriage ceremony,
- Withdrawal from the engagement without a legitimate reason,
- Unjustified withdrawal based on discriminatory grounds (such as financial or ethnic differences),
- Missed opportunities to marry another person,
- Loss of professional opportunities—particularly for the fiancée.

In strictly domestic relationships, applicable substantive laws already exist to address these scenarios. However, in cross-border engagements, the question becomes one of conflict of laws.

Since the basis for compensation is the harm suffered by the aggrieved party, the issue must be legally categorized as a non-contractual obligation, more specifically as a tort. Accordingly, the governing law (**Dawoudi, G.A., 2011, p. 166**) is determined by Article 20 of the Algerian Civil Code, which designates the law of the place where the harmful act occurred as the applicable law.

4. CONCLUSION

Engagement, in the context of private international law, raises complex issues related to applicable law-particularly regarding its validity and legal consequences-due to the differing nationalities, customs, beliefs, and legal traditions of the parties involved.

To resolve these complexities, conflict-of-law rules must be invoked. However, due to the silence of the Algerian legislator on this matter, legal practitioners must rely on two fundamental mechanisms:

1. Legal characterization, which involves identifying the nature of the legal issue and assigning it to a suitable legal category with an established conflict-of-law rule.

2. Principles of private international law, as acknowledged in Article 23 bis 2 of the Algerian Civil Code, which serve as a subsidiary legal source when no specific legislation applies.

Applying these two mechanisms, and considering that engagement is a preliminary stage of marriage, the following conclusions are drawn:

1. The substantive requirements of engagement are governed by the national law of each party at the time of engagement.
2. The formal requirements are governed by one of the following: the law of the place where the engagement occurred, the common domicile of the parties, or their shared nationality.

Furthermore, these tools help address the legislative vacuum regarding the legal consequences of engagement:

1. The effects arising before withdrawal are governed by the national law of the fiancé at the time of engagement, with the term “fiancé” understood to include both genders.
2. The effects arising after withdrawal are governed by the law of the place where the obligation was created, such as:
 - Unjust enrichment in the case of dowry or returned gifts,
 - Tort liability for damages suffered due to unjustified withdrawal.

Key Recommendations from the Study

1. Activate legal characterization and private international law principles to overcome the lack of conflict-of-law rules regarding engagement in Algerian law.
2. Apply the national law of each party at the time of engagement to govern the substantive conditions of engagement.
3. Apply the national law of the fiancé at the time of engagement to govern the pre-withdrawal effects of engagement.
4. Apply the law of the withdrawing party's nationality at the time of withdrawal, or adopt a gender-neutral approach that considers the national laws of both parties.
5. Apply Article 20 of the Algerian Civil Code, which governs non-contractual obligations, to determine the law applicable to post-withdrawal consequences such as unjust enrichment and tort liability.

6. Consider the substantive legal provisions in UAE and Kuwaiti legislation that regulate dowry given during engagement, as useful models for legislative reform.

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