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Concepts of Choice of Law and Jurisdiction under Private International Law & International Contracts

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ABSTRACT

In this paper we have focused on the concepts of Choice of Law and Jurisdiction under Private International Law. We shall be focusing mainly on the importance of these concepts during the formal execution of International Contracts. International contracts are becoming more relevant because corporations, firms and individuals are taking part in international forums to expand their enterprises, employees, charities, land exchanges, joint ventures or collaborations. A country must be adequately careful to respond to questions arising from cases concerning foreign contracts, and this can only happen when courts recognize the concept of jurisprudence. Sometimes it occurs that an advantageous party will attach jurisdiction provisions that support it and therefore then only the words of a clause, and not the true meaning of the parties, must be tested by that court. There are also situations in which parties have no competence provisions, and the court should consider the closest relation between the places in which they and the parties or corporations are permitted to go. Choice of Law is the selection of the appropriate law which has to be made as per the rules of Private International Law. Jurisdiction is meant to be the power of a court to hear and to adjudicate an issue on which a decision is sought. We shall further delve into the detailed explanation of these concepts with reference to the execution of International Contracts.

I. INTRODUCTION

Choice of Law: It is not disputed that the issue of selection of choice of law is one of the key problems of conflicts of law or private international law. The choice of law is uncertain since the scholars of dispute have not argued that the choice of law should be an important issue in determining a large range of cases. They did not convince judges to follow the right procedure for the important choice of law decisions. In consequence, courts are frequently less concerned

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with the choice of law than about the other practical effects of the decisions they take."²

Most experts and courts acknowledge that the law governing their partnerships must be widely accepted by the contracting parties. Therefore, a non-controversial assertion may be made to put significant weight on the party's autonomy.

English law restricts the freedom of parties. As per the rules of the English Law, it has been opined that the proper law of contracts is the law selected by the parties to the case, which is selected either expressly or impliedly, and that such decision made by the parties is then valid and definitive. The decision of the parties to the contract must then, be trustworthy and lawful. It is closely related to the contract, however, to remember that the compulsory clauses are not circumvented by such legislation.

The law itself, founded by House of Lord through the court decision of Dicey and Westlake, is to determine its validity of the contract, and the following points are a part of the same: its validity, interpretation and its results. Almost all countries are participating in this scheme but in common law countries the word 'proper law' is used. There are also several issues about the foundation and the law governing the contract when a contract is formed. Is it possible that more than one contract law structure could exist?

These questions have no straightforward answers. The answers to such questions are found delving into the details of the case. However, when judicial precedents are taken into consideration and a trend can be seen on these issues, a general understanding can be established. However, something like party independence in taking decisions exists and plays an important role in the implementation of the contract as has already been stated. The Parties shall be independent in choosing the system of law they agree upon to regulate the contract.

If we speak about proper law, in this sense, there is another term, i.e. "incorporation of legislation" into the contract. These are principles which belong to the contract and also to a legal framework as legal principles. However, they vary from the rules of proper law, since they are simply included in the contract and as relevant as other contractual clauses. This is why any reform in the law system of a country whose legal theory is referred to does not make any major changes to the contract.

Jurisdiction

The first issue of the court qualified to adjudicate the issue in the foreign case which may theoretically include conflict-of-laws issues is the issue of jurisdiction of the particular case.

² JOSEPH SINGER, A PRAGMATIC GUIDE TO CONFLICTS p. 731, 743 (1990).

Even though the complainant may choose where to bring a lawsuit, but the court may not accept the case as they may not be having the jurisdiction to try the case, may be the court is unwilling to exercise its jurisdiction or for reasons of '*forum non conveniens*' (Latin: "inconvenient forum"), as it happens in some of the common law countries.

The complainant's decision on where the place of filing of case should be, depends on various factors. In a jurisdiction fairly near his or her house, for instance, a claimant would choose to take action because there would be more readily available witnesses and evidence. It is also necessary to have legal problems. An applicant may be more likely to lodge a case in a court that provides him with procedural and other advantages and that has assets to satisfy the final judgment. For example, it will be possible for a jury to assess damaging conditions in the tort case, the availability of punitive damages, facility to seek pre-trial finding of proof (usually used in the USA), and the possibility to pursue only a portion of one's argument to determine a likelihood of success before investing resources in a litigation. (A practice commonly pursued in Germany).

II. THE DOCTRINE OF PROPER LAW/ APPLICABLE LAW OF CONTRACT

It is known as the rule of law or a collection of rules or principles regulating the various aspects of a contract. This word, however, is expressed differently in different systems. The term "proper law in relation to contract" is unique to common law in England and to other English law-based structures³. In other structures the commonly used words are "governing law" or "applicable law" in the contract. In the case of *Amin Rasheed Companies*, it was defined as "the law in place which governs the contract and the roles of the parties under it", this was specified by Lord Wilberforce⁴. This law in place in such which normally determines its legality and validity, its construction and effect, and its terms of executions and its condition of execution. Therefore, the correct legislation covers the most possible legal problems, but not generally."⁵ Brown summarized this concept as the creation of a contract is the creation of the proper law of the contract, and the parties refer to a system of legislation which gives life to a contract."⁶

There is no question that the scope of the contract's proper law is completely dependent on the

³ A.F.M. Maniruzzaman, 'Choice of Law in International Contracts: Some Fundamental Conflict of Laws Issues', Vol.16, JOURNAL OF INTERNATIONAL ARBITRATION 141 (1999).

⁴ *Amin Rasheed Shipping Corporation v. Kuwait Insurance Co.*, (1983) 2 All ER 884.

⁵ D R Thomas, *Arbitration Agreements as a Signpost of the Proper Law*, LLOYD'S MARITIME AND COMMERCIAL LAW QUARTERLY p.141 at p.141 (1984).

⁶ R Brown, *Choice of Law Provisions in Concessions and Related Contracts*, Vol. 39, THE MODERN LAW REVIEW p. 625 at p. 638 (1976).

intention of the parties. The modern Anglo-American common law and civil law and many international conventions permit contracting parties to divide the correct law, that is decomposition, into different laws rather than into a single law, with the intention of regulating the various aspects of the contract⁷. International conventions such as the Rome Convention for the Law of Contractual Bonds (1980) and the Mexico Convention for the Law of International Trade (1994) have therefore slightly differed from the conventional notions and scope of the doctrine of common law on the proper law of a contract.

As already stated, both conventions use the term common law only as neutral, i.e. "applicable law" That is possibly to avoid the jargonistic illusion, as the term 'proper law,' in English jurisprudence, explicitly refers to the legal system as such, whereas the term 'applicable law,' which is increasingly used in recent Foreign codifications, seems to be suggesting something less than a legal system, that is to say legal concepts or laws which do not apply to the law.⁸

III. JURISDICTION UNDER PRIVATE INTERNATIONAL LAW

Jurisdiction in general may pertain to a person or to property. A person may become amenable to the jurisdiction by his mere presence within the territorial jurisdiction of the court. Physical presence in the sense that the process has been served on him personally is the only requirement for exercising jurisdiction, although he is a foreigner in the course of transit to some other country and although the cause of action has no factual connection with England.

In what are called *action in rem* (proceedings against a ship or a chattel) jurisdiction depends upon the presence of the *res* in England. Under certain circumstances when the defendants are not present, in that case the court may exercise its right of jurisdiction which is called the 'assumed jurisdiction'. This assumed jurisdiction was brought into the picture by the Common Law Procedure Act, 1825. In India rules which refer to the jurisdiction are found in the Code of Civil Procedure.

(A) Exemption from Jurisdiction

It is a well proven principle that the English Courts will not exercise jurisdiction over the person or property which belong to the Sovereign of a Foreign State, unless and until the person is will to submit itself to the jurisdiction of the English Court. This rule of exemption of jurisdiction consists of two principles:

⁷ Supra. 2, at 153.

⁸ London Court of Arbitration Rules, 1st January, 1998, Art.14.2.

- a) The first is that the court will not by the issue of a process make a foreign sovereign a party to the case.
- b) The second is that the court will not, whether the sovereign is a party to the proceedings or not, by its process seize or detain a property which belongs to the sovereign or is in the control of the sovereign.

It must be noted that these are two types of immunities provided to a sovereign. The first one is a personal immunity and the second one being a proprietary immunity.

- **Personal Immunity**

There is no to personal immunity. Although the sovereign might use an artificial or assumed name and enter into a commercial or ordinary transaction using that name, yet an action cannot be instituted against him in that name. This is illustrated by the well-known case off *Mighell v Sultan of Johore*. This case is also an authority for the proposition that we were off jurisdictional immunity cannot be implied against a sovereign. The waiver should be express and unequivocal.

- **Proprietary Immunity**

Proprietary immunity extends to the following 3 cases

- i. Where the sovereign is the admitted owner of the subject matter of the suit.

Example: *The Parliament Belge*: a ship belonging to the Belgian Government collided with a British ship in Dover Harbour. The Belgian ship carried not only public Mail but also merchandise and passengers for hire. An action brought against the Belgian ship for negligence was stayed on the ground that the ship was the property of a sovereign government and this was confirmed by the Court of Appeal. Another important point decided in this case was that that jurisdictional immunity enjoyed by the foreign government was not lost because the vessel was engaged on trading operations.

- ii. Where the sovereign though not the owner, in de-facto possession or control of the subject matter through servants.

Example: *The Christina*⁹: The Republican Government of Spain issued a decree requisition of all private ships registered in Spain. The *Christina*, a private ship registered in Spain was in the British port of Cardiff at the time of the decree. Spanish consul boarded that ship and dismissed the crew members who were not sympathetic to the Republic government of Spain and

⁹ *The Christina*, (1938) I All E.R., 729.

appointed a new captain and a new crew on behalf of the new governor on behalf of the new government. The owner sought writ to detain and get possession of the ship by the sovereign through its agent and held that the action would not lie.

iii. Where the sovereign though not in possession, has immediate right to possession.

Example: *USA v Bank of England*¹⁰: During the Second World war The Germans seized some gold bars belonging to a company and carried that off to Germany. This was recovered by the allies and deposited in the Bank of England to be shared among UK , France and USA. After the war, the company claimed the gold bars from the Bank of England. It was held that the bank was only a belly and the sovereign governments were entitled to immediate possession of the gold bars hey. Hence the protective umbrella of a sovereign immunity will be available, and the action would not lie. It has been decided by the House of Lords in *Rahimtoola v Nizam of Hyderabad*, that the above principle of proprietary immunity is equally applicable where the subject matter of the suit is chose in action hey like a bank deposit or money due, etc.

IV. JURISDICTION UNDER INTERNATIONAL CONTRACTS

Trade agreements and Commercial Contracts between UK companies and other foreign companies - particularly non-EU ones - may involve some difficult jurisdictional problems. It plays a vital role to decide in advance which country's laws and courts will apply to any contract related issues. The agreements or contract will help to explain the situation by including governing clauses and jurisdictional clauses in the contract itself.

In a transaction without an international aspect, the structure of law regulating the transaction or the courts having jurisdiction in the event of a dispute would generally not need to be defined. However if the agreement has foreign implications, it is fair to lay down in the contract the law relevant and jurisdiction – i.e., which laws of the country control the provisions of the contract and in the court of which country shall eventually settle any conflict if any arises.

The key external factors that have a huge effect on a transaction are:

- Where both the contracting parties do not belong to the same nationality or country.
- Where each party owns essential assets and properties only in the country from where they belong.

¹⁰ *USA v Bank of England*, (1952) I All E.R. 572

- Where the agreement is regulated by other countries' law because the contract could be deemed to have been created in that particular foreign country.
- Where the entire or only a part of the transaction is carried out in a country other than one or more countries where the parties belong from.

In the event of any international elements being present, the parties should be clear regarding the rule of law regulating the contract and which courts are to be competent in the case of a conflict. The parties will appear to choose that particular rule of law which they are more acquainted with, simplistically and the courts of another jurisdiction will usually respect such a choice of law, subject to public policy and to compulsory legislation of that other jurisdiction.

In the event that an issue occurs regarding which courts should be considered competent in the case of a dispute or where a contractual clause may require immediate compliance is also a problem. The parties may want to submit itself to the jurisdiction of one country, but it may not be prudent if one party has a significant asset in another country or if the responsibilities of the contract in that other country are to be implemented promptly. It should also be considered if there are rights within different jurisdictions to be mutual compliance.

If for example, an English company signs an agreement in China to deliver the goods to a company, the English company may wish to have an English law contract and to be held to any dispute by English courts and shall also want that the contract shall be written in English. But if the Chinese company holds no assets in England and fails to fulfil the terms of the contract, then in that case the English court will be compelled to enforce the case in a Chinese Court which will in itself become a time consuming and expensive procedure.

Often there is a possibility that either of the parties may violate the provisions of the contract and may begin proceedings in another jurisdiction. For example, in the case mentioned above, if the Chinese company is not satisfied with the quality of products, it may file a suit in the Chinese courts and the judge may decide to allow the suit to go ahead even though the contract states that the English courts have jurisdiction.

This principle also applies in the EU: there were many cases in which a party had initiated a suit in its homeland in one EU state, even though the contract stated exclusive jurisdiction for the courts of the other party home state – and the courts permitted this action to go ahead.

Governing Clause in International Contracts

Various kinds of businesses can be a part of cross-border contracts which function in an entirely different legal system. Nonetheless, the parties entering the contract may belong from two

different countries, but the execution of the contract may take place in a third country which may become a bigger headache. That makes the decision regarding the legal structure regulating the contract even more vital.

Firstly, any argument as to which country's laws should be applicable for the regulation of the contract need not be raised. This problem can be easily solved by including a governing clause in the contract which shall expressly state the choice of law which is applicable to the contract. These types of clauses are referred to as "boilerplate" clauses and are prevalent in virtually any contract and are normally specified at the end of the agreement.

Jurisdiction Clause in International Contracts

Where the governing clause states that which country's laws are applicable to the international contract, the jurisdiction clause states in which country's court a suit shall be filed if a dispute arises. The addition of a jurisdiction clause helps prevent preliminary struggles in deciding whether a case is to be litigated in many jurisdictions or the parallel litigation status of a case.

There are two types of Jurisdiction Clauses, these two are 'exclusive and 'non-exclusive'; the first means that only specific courts which are listed in the jurisdiction clause may hear a lawsuit; the second means that a case can be heard by the courts specified, while the parties are free to approach other courts as well for litigation.

Importance of these Clauses

The manner in which an international contract is interpreted and implemented can eventually alter owing to the governing law and jurisdiction clauses (i.e. in accordance with the laws of a specific country or the precedents by which a court binds, itself). Care should also be taken to ensure that no ambiguity is generated with respect to the wording of such clauses. In addition, reference to any country-specific legislation should be avoided unless it is in compliance with the legislation. For guidance on writing foreign contracts, it is helpful to ask a lawyer.

When deciding which law or jurisdiction to be included in an international contract, understanding the laws and courts of different countries is an essential factor. What would better represent your interests in the contract should be the decisive determining factor; often it may be the legal structure of another party rather than your own, or even a whole different world.

V. ROLE OF PROPER LAW IN INTERNATIONAL CONTRACTS

The Sole Arbitrator Professor Dupuy has said, "If it should be agreed that the contractual clauses in effect which only depend on the choice between the Parties in the initial stage of the

choice of the applicable law, the legal framework in which the applicable clause has been defined is to be decided, and from which the same clause shall be bound¹¹.

According to the conventional viewpoint, the proper law of the contract is determined by the *lex fori* (law of the country where action has been instituted)¹², the right use of expression by Dr Mann, and more precisely the clash of laws of the *lex fori* (e.g. *lex facit arbitrum*) which plays a vital role in the determination of the proper law of the contract¹³. This means that the rules of the *lex fori* in dispute with the law encourage the parties to select the law. This right of the parties to make their choice comes in other words from a set of rules on conflicts of law, which some have functionally defined as 'focal rules.'¹⁴

The contract gets the status of "contract sans loi" without such a structure¹⁵. It is the independence of the Party as a general concept of conflict of law where the contract is binding and the proper law of the contract is applicable¹⁶. In that sense, in the form of arbitration, the parties regulate the Court *lex fori* in terms of preventive principles of genuinely foreign public policy.

There is a different view of this case, the *Grundlegung* or the "basic legal order," which requires parties to make a choice of law. It takes up both the conflict of laws and the right law of the contract the role of the binding power. The contract as well as the proper law of the contract are on the same page to acquire a binding force from *Grundlegung*. The principle of *Grundlegung* applies an irrevocable and binding effect to the choice of law clause when the choice of law is made. It would be a frustration of the parties' intention to select law by its role in deciding the validity of a contract and its laws in an impartial way. The theory thus goes against the doctrine of the autonomy of the party. In accordance with the 'proper law of the contract the validity and binding force of the arrangement must be assessed in accordance with the conflicting principles of law'¹⁷.

VI. CHOICE OF LAW THEORY-CRITICISM

In most of the recently decided cases, the use of the choice of law theory exaggerates the importance of the choice of law provisions. These concepts only decide the case when courts

¹¹ *Texco v. Libya*, (1977) 53 ILR 389

¹² Vol. 12, A.V. DICEY, *THE CONFLICT OF LAWS* p. 584 (1993).

¹³ F.A. Mann, 'Lex Facit Arbitrum', Vol. 2, *INTERNATIONAL ARBITRATION LIBER* p. 157 (1967)

¹⁴ K. Lipstein, 'International Arbitration Between Individuals and Governments and the Conflict of Laws', *ARBITRATION INTERNATIONAL LAW* p. 177, at p. 180 (1988).

¹⁵ P. NYGH, *AUTONOMY IN INTERNATIONAL CONTRACTS* p. 175 (1999).

¹⁶ Arthur T. Von Mehron, *Arbitration between States and Foreign Enterprises*, Vol. 5, *FOREIGN INVESTMENT LAW JOURNAL* pp. 191-201, at p. 196 (1989).

¹⁷ Vol. 2, H. BATIFFOL AND P. LAGARDE, *DROIT INTERNATIONAL PRIVE* pp. 260 (1976)

naturally sense that justice calls for the compliance of a state's rule. However, the majority of choice of law cases do not establish fairness in the instinctive sense of dispute. Only the significant outcomes produced by competing rules are taken into consideration in the ordinary choice of law cases and competing provisions on the complexity of litigation and settlement negotiations may have their effect.

In civil, criminal, or disciplinary cases, the choice of law is irrelevant. However, the courts agree that procedural provisions play a critical role in every legal system and that adjudication and administration are impossible without a core of procedural laws.

Substance is therefore not everything; courts and administrators understand that there should be balance between significant outcomes and damage to the system which would happen when procedures are not taken into account¹⁸.

Choice of Law and the Common Law Process

Many legal scholars accept that before applying the proper law of the contract, questions regarding choice of law shall be decided by delving into the responsibility of the facts of the matter the courts resolve and/or should resolve choices on the law. The rules on competence for the first re-establishment, drawn up by Beale, have definitely been based on the fact that a decision on law is a different step in the process of determining the case and temporarily earlier. Douglas Laycock, for example, argued in favour of a rule-of-law that will "would apply to all cases which fall within their ambit, regardless of which country is the venue and regardless of who will be helped or harmed¹⁹." The plea from Perry Dane for "investment" in choice of law determinations implies that the role of the court in choosing law cases is to find out and implement whatever the structure-of-law is and this includes the legal rights applicable to the particular case²⁰.

Our best judges in the common law should not deduce cases, beginning with key premises and only applying those premises to their circumstances²¹. Instead, it starts with the facts that lie ahead, constitutes a provisional decision on which group is worth winning, and then uses precedent and other sources of authority to verify or replenish its conclusions. However, choice of law cases is not the only problem for which choosing legislation is the only one; opting for

¹⁸ Joseph W. Singer, 'Real Conflicts', p. 26-33 (1989).

¹⁹ Douglas Laycock, 'Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law', Vol. 92, COLUMBIA LAW REVIEW p. 249, 318 (1992).

²⁰ Perry Dane, Vested Rights, "Vestedness," and Choice of Law, Vol. 96, YALE LAW JOURNAL p.1191, 1242-72 (1987)

²¹ Stewart E. Strek, 'The Marginal relevance of Choice of Law Theory', UNIVERSITY OF PENNSYLVANIA LAW REVIEW p. 949, 994 (1994).

law cases includes mostly tort, contract or estate cases. The factual aspects of the case are likely to pre-value as the judge develops the sense of who should prevail, unless choice of legal issues hamper the judge's ability of imparting justice, for example, by spoiling or damaging the expectations, on which one party relied or encouraged the concepts like forum shopping²². To convince the judge to change its initial findings as those results contradict the principles of choice of law, a legal scholar (or a litigator in practice) must show that the application of the principle of choice of law is appropriate either to encourage some vital policy affecting the entire society as a whole or to protect any fundamental right and that politics or rights are enough to help change the initial thinking of the judge about the verdict of the case.

VII. SINGLE LAW OR DEPECAGE

Depecege is a system in which contracting parties may, by their own will and independence, assign a single law for the entire contract or may assign different laws in relation to different parts or issues of the contract²³. Professor Nygh states that depecege allows and provides the parties with a broad variety of options and has also acknowledged that depecege parties can free the parties from domestic constraints by using national law. Depecege has also provided the opponent parties with many choices²⁴. In contractual practice the parties can select a combination of legal sources which are to be used for various issues in the choice of law clause. The theory of depecege plays a vital role in international loan agreements. The principle of depecege or splitting proper law has also been endorsed by numerous international bodies in various international legislations and conventions, most notably the Rome Convention on Contractual Obligations 1980.

Article 4, which prescribes the relevant law if it is absent, enable "a separable part of a contract which bears a closer connection with another country may be regulated by the law of that country, by way of exception." The article 3, titled Freedom of choice provides, for example, that A party may choose to select, by its choice, the law applicable only to the total or part of the contract. While the approach to division of proper law is supported in literature and jurisprudence and more and more supported by various international conventions and guidelines made by international professional bodies, there are some sceptics and criticism of it²⁵. As Vischer pointed out, 'Depecege increases the possibility of conflicting solutions arising

²² Terry S. Kogan, 'Toward a Jurisprudence of Choice of Law: The Priority of Fairness over Comity', Vol. 62, N.Y.U LAW REVIEW p. 651, 681(1987).

²³ Lord McNair, 'The General Principles of Law Recognized by Civilized Nations', Vol. 33, BRIT. Y.B. INT'L LAW REVIEW p.1, at p.4 (1957).

²⁴ P. NYGH, *Supra* note 14, at p.176 .

²⁵ A.F.M. Maniruzzaman, *State Contracts and Arbitral Choice-of-law and Techniques: A Critical Appraisal*,

from references to different laws in various aspects of the issue.

A few French lawyers have given the same point of view in arguing that depechage is contrary to the basic objective of choosing law in a contract, to combine the different contractual clauses under a single structure. Despite the negative attitude of some jurists, the depechage principle has become rooted in many states' legislative, arbitrary and justice practices²⁶. Although the depechage technique is welcomed by lawyers' ad tribunals, it needs the requisite treatment. In practice, arbitrators also have the power to delegate the exact position to various legislation in this provision and to decide relationships between it in the case of a complex choice of law clause in the contract²⁷. There are also discretions for the contracting parties. The parties will sometimes give the future arbitrator advice on how to apply selected sources. The arbitrator can decide one system of law in the sense of a complex choice of legislation clause²⁸.

VIII. ANALYSIS OF CHOICE OF LAW IN RESPECT TO INTERNATIONAL CONTRACTS (DEPECHAGE)

a) Whose Choice of Law Rule shall the Court use in case of Disputes?

Finally, this question asks if depechage concepts can first of all be implemented. If the court makes use of a rule of law under which the *lex loci delicti* has not been dismissed, then the concept of depechage will not be used. Some states have eventually accepted the modern forms of *Lex loci delicti* types, which complicates further the issue of the application of depechage. Is there a federal statute which can decide which state choice of law should be applied?? For instance, the laws of the State in which the 'act or omission' occurred, including its rule of law should apply under the Federal Tort Claims Act. If the Federal Court possesses the jurisdiction based on diversity, the Court must then adopt the Forum State's choice of law rule.

b) Do the laws involve a conflict?

The states who might be interested in seeing their legislation extended to a specific matter must have conflicting laws, in order for a suit or issue to proceed. A "true conflict" is one in which states with interests in the presented issue have different legislations, and applying the law of one State will contradict or undermine the interests of another state. "There exists a false dispute if the implementation of the legislation of the other jurisdiction will affect only one

Vol.15, JOURNAL OF INTERNATIONAL ARBITRATION, pp.65-92 (1998).

²⁶ C.McLachlan, Splitting the Proper Law in Private International Law, Vol. 61, BRITISH YEARBOOK OF INTERNATIONAL LAW p.311 (1990).

²⁷ P.WOOD, LAW AND PRACTICE OF INTERNATIONAL FINANCE p.19-22 (1980).

²⁸ K.Mettala, Governing-Law Clauses of Loan Agreements in International Project Financing, Vol. 20 INTERNATIONAL LAWYER p.225-228 (1986).

jurisdiction's governmental interests. However as illustrated by Schoeberle, Roselawn III, IV and Metro Detroit, the rules of law on option do not differentiate between true disputes and false disputes. In this case the Court must enforce the laws of the State whose rights would be impaired if its law were not to be enforced." Court research begins as the majority of legal experts conclude that they do not have a problem with choice of law.

c) What substantive state law should be applicable to a particular issue?

During this final step, courts shall investigate into the restatement provisions of Section 145, the following factors shall be considered: (1) the place at which the accident occurred; (2) the place where the act of causing the injury took place (3) the place of residence of a party in the event of a corporation, the corporate place and main place of business); (4) the place where the core relationship of the parties is focused. The courts analyze the case law on a specific matter to decide the considerations weigh more seriously. For example, the courts regard the residence of the discharged or injured plaintiff as primary in deciding which state law would extend to compensatory harm.

IX. CONCLUSION

In the last century there has been an extraordinary change in the study of choice of law rule. Number of legendary legal minds have tried to establish the theory of conflict of law that prevents Lex loci delicti's arbitrary existence in deciding whose laws are applicable. The courts have accepted to face complexities by letting go of lex loci delicti and its mechanism without any legal analysis. Complex legal interpretation by courts includes communications, consideration of government interests and the concept of fair expectations. While depecege appears to be increasingly complex at first glance, in fact depecege allows courts to restrict the number of real conflicts among two different legislative bodies. Rather than put a blanket ban for a multi-faceted problem of choice of law, depecege distinguishes the problem from the problem of false conflicts and only allows such problems to occur when actual conflicts exist. Thus, the best realistic outcome is obtained by justice, fairness, and performance.

If legal bodies disagree with this feature in a way that sabotages its smooth functioning, a remedy must be sought. By separating legal problems, depecege permits completely different legal entities to work harmoniously while respecting each other's interests. In the theory of contractual law, a legal order or a legal structure should not generally be referred to as in English Law and many similar Commonwealth legal systems. Any other alternate terminologies, such as "enforceable legislation" or "government law," may be more appropriate in order to prevent the ambiguity of this methodology expression. For that reason, the neutral

term may have been used in relevant international conventions. In an international contract the extent of the relevant law or the option of law provision depends on the purposes of the parties.

In situations where a transaction is honoured or carried out over the Internet, conventional international private law standards on competence are very difficult to accept and be made applicable. There are now unique rules adopted in EU law that are designed to meet the needs of this sector. However, a lot of problems still have to be resolved. Analyzation of, in particular when it comes to electronic transactions, of international private law concepts. The world of business is very concerned about certain words being defined very broadly. These problems have not yet been clarified by the EU Court of Justice. In view of the emergence of innovative marketing strategies, it takes time to adapt current legislation to the needs of today's companies.

Another point which I have come across while researching about the concept of Jurisdiction is that in most International contracts, the biggest question which occurs is that what should be the jurisdiction of the case, in the event when a dispute arises. In such cases it should be kept in mind that there should always be a jurisdiction clause which shall be included in this contract in order to overcome such an issue which shall eventually not arise.

Another solution to the problem of jurisdiction is the concept of ADR. There is also an option of including the provision of the Arbitration Clause in International Contracts. ADR (Alternative Dispute Resolution) may help to settle a trade dispute without having to deal with litigation, thus preventing a trial and dealing with the resulting legal or regulatory questions entirely. arbitration is a type of ADR.

Summarized, the choice of law has been an environment with intricate details for stakeholders in the sense of international contracts and trade agreements. The problem emerged when the principles which are fundamental to international trade contracts in Indian experience are unclear and therefore it is necessary for the courts to respond to international trends which provide those basics for the award of international contract lawsuits. This proposal becomes more important in the sense of growing global trade, as it eventually leads to a rise in conflicts between parties. The Courts therefore need to develop guidelines for selecting the right legislation, which is more predictable and certain, while their independence remains unhampered.

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