Contractual obligations in conflict of laws under the Private International Law

Abhishek Ghosh

College Student

Amity Law School and College

Amity University, Noida, India

abhi1245ghosh@gmail.com

Abstract

This research paper is related to the analysis and study of contractual obligations in conflict of laws under the Private International Law. This work is divided into three parts, the first part deals with the general part of the contractual obligations; the second part deals with the specific contracts and the third part deals with the international and national jurisprudence aspect. This work is based on the minimum contribution in the application of the international private law and clarifies the omission, collision and legal problematic aspects in practice. At the end of this work, there is conclusion which will serve as a deduction over the analysis and studies done to this part of the private international law.

This is a theoretical and practical part is related to the analysis and study of the contractual obligations in the conflict of law under the private international law. This work is divided into three parts, where the first part deals with the general part of the contractual obligations, the second part deals with the specific contracts which are found in a general regulation under law No. 10428, dated 02/06/2011. And the third part deals with the international and national Jurisprudence aspect.

This work is based on the ex-positio synchronic system aims at giving a minimum contribution in the application of the international private law and clarifies the omission, collision and legal problematic aspects in practice.

At the end of this work there is my conclusions which serve as a deduction over the analysis and studies to this part of the private international law. In the globalized economy, cross-border contracts have become the norm rather than the exception. The increasing internationalization of commerce, business, and personal relations has led to complex legal challenges, one of the most significant being the issue of contractual obligations under different legal systems. Conflict of laws, or private international law, seeks to address the complexities arising when parties from different jurisdictions enter into contractual agreements. This research explores the key issues of contractual obligations in conflict of laws, including the determination of applicable law, the role of party autonomy, and the principles guiding courts in resolving disputes. By analysing both common law and civil law systems, this paper also examines how international conventions, such as the Rome I Regulation and the Hague Principles, contribute to harmonizing legal frameworks on this issue.

Key words- Contractual Obligations, Conflict of Laws, Private International Law

Introduction

Background

Contracts form the backbone of commercial transactions, and legal systems across the globe have developed detailed rules to govern their formation, execution, and enforcement. However, when a contract involves parties from different jurisdictions or a contract affects multiple legal systems, conflict-of-law issues arise. Which jurisdiction's law should

govern the contract? How do parties ensure their rights and obligations are enforced? What happens when the laws of two or more countries conflict?

These questions fall under the broader domain of "conflict of laws" or private international law. While domestic contract law focuses on regulating agreements within a single jurisdiction, conflict of laws deals with the challenges arising when contractual relationships transcend borders. The issue becomes increasingly important in today's interconnected world, where businesses, consumers, and even governments regularly engage in cross-border transactions.

Research Objectives

The primary objectives of this research are: -

- To explore the key concepts of conflict of laws as they relate to contractual obligations.
- To examine the principle of party autonomy and its role in selecting applicable law.
- To discuss how courts and arbitral tribunals resolve issues when conflicting laws arise.
- To assess the impact of international conventions and treaties on contractual obligations in cross-border contexts.

Methodology

This paper adopts a doctrinal research approach, analysing primary sources such as statutes, regulations, and case law, as well as secondary sources like academic commentaries, journal articles, and reports from international organizations. Comparative legal analysis will also be employed to assess the differences between common law and civil law approaches.

The concept of Conflict of Laws

- **Definition and Scope**

Conflict of laws refers to the legal framework that governs disputes involving foreign elements—be they parties, transactions, or facts. In the context of contractual obligations, conflict-of-law rules determine which jurisdictions legal system will apply to the interpretation, validity, and enforcement of a contract. The goal is to provide certainty to the contracting parties while balancing the interests of the various legal systems involved.

- **The three central questions in Conflict of Laws**

In any conflict-of-laws situation involving a contract, three central questions arise:-

- **Jurisdiction-** Which court or tribunal has the authority to hear the case?
- **Choice of Law-** Which legal system should govern the contract?
- **Recognition and Enforcement-** Will a court in one jurisdiction recognize and enforce a judgment or award rendered by a foreign court?

This paper focuses on the second question, the choice of law, and how legal systems address this issue in contractual obligations.

Autonomy Criteria of the Will under the Private International Law

There exist some necessary and well searched constitutional principles in the doctrine of obligations law, which are formed by different authors with the passing of centuries. One of the constitutional principles is the autonomy criteria of the will, Lex Voluntatis. This principle makes one of the fundamental principles of private law. Appearance of such principle in the obligatory law consists in the contractual freedom and non-formal character of the judicial actions.
Contractual freedom means that every party on the contract is free to define not only with whom it wishes to enter in contractual agreement but also the content of the contract. This principle is sanctioned from article 660 of the Civil Code, which defines that the parties on the contract define freely its content within the established limits from the legislation. So, by researching this, I can conclude that contractual freedom may be limited only by law.

What also comes out of this is that the contractual freedom, like any other freedom, for as long as it is exercised in an organised government society will be absolute and unlimited. The freedom and autonomy of the privates has a double-folded aspect. The double-folded aspect can be negative as well as positive. Contractual freedom and autonomy in the negative aspect as a principle state that every person is obedient to his own will and he is not obliged, but only when law allows such a thing, from the will of others. In the positive aspect, contractual freedom and autonomy shows that privates may through an act of their will can create, change or deplete an agreement. Under the function of this aspect, the parties have the right to choose between the different types of contracts that are more adaptable to their goal to define freely the content of the contract.

A consequence of the principle of the will autonomy is that a good part of the norms is of a non-obligatory but oriented in character. After analysing in a general way, the concept of the will autonomy from the obligatory law viewpoint, now let's focus on the international aspect of this substantive principle. Under the international law, it has developed different doctrines to be accepted and applicable in order to regulate contractual obligation. Such a doctrine has three groups and they are as follows: -

- On the place where the contract is signed (Lex Loci Actus)
- On the place of its execution (Lex Loci Solutionis)
- On the parties will (Lex Voluntatis)

When I analysed the Albanian legislation, specifically law No-3920, in article 17 its states that the right of the parties in a contractual judicial agreement with foreign elements to choose the law which will judicially regulate such agreement. This principle prevails against other principles. But this principle has its own limitations. The new legislation stated as law No. 10 428 explicitly foreseeing this principle under article 45. Da Lege Lata the leagla clause implements under the principle of Lex Loci Contractus. The parties showing their will under Lex Specialis, may define the applicable law for all the in omnibus contract or for a special/singular part of it. If a foreseen jurisdiction comes out from the will of the parties to solve the dispute, then it is considered that the law of the country has chosen for the contract adaptation. It derives from the latter and in such situations, Lex Fori will be applicable. Agreement must have substantial conditions which are defined by dispositions. The substantial conditions should be valid and proper for parties will. And it should be expressed in it. Parties must specify in a special statutory clause such fact into their contract. The parties through consensus and bilateral agreement among them may agree that the contract is regulated by another law, which will be different from the law described in the beginning of the contract and if such a change emitted after the parties signed the contract does not violate ad valeditatem and ad substanciam the contract itself or the rights of the third parties.

A consequence of the principle of the will autonomy is that a good part of the norms of the rights over obligations are of a ius dispozitivum which mean non-obligatory in the English language, but oriented character, in the sense that the parties through agreement may define different regulations from those that are foreseen in them. After analyzing in a general way, the concept of the will autonomy from the obligatory law viewpoint, now let's focus on the international aspect of this substantive principle. In the positive aspect, contractual freedom and autonomy shows that privates may through an act of their will, create, change or deplete a wealth agreement. Under the function of this aspect, the parties have the right to choose between the different types of contracts that are more adaptable to their goal, to define freely the content of the contract, as well as they may have an atypical contract.

Party Autonomy and Choice of Law

The Principle of Party Autonomy

One of the foundational principles in conflict of laws is the concept of "party autonomy," which allows contracting parties to choose the law that will govern their contract. The rationale behind party autonomy is the recognition that parties, especially in commercial transactions, are best suited to determine the rules that will govern their relationship. This principle is widely accepted in both common law and civil law systems, although its application and limits vary.

Limits on Party Autonomy

While party autonomy is a cornerstone of modern contract law, it is not without limits. Many jurisdictions impose restrictions to protect public policy and weaker parties in specific types of contracts. For example, in consumer or employment contracts, parties may not have the same freedom to choose the applicable law, as these contracts often involve imbalances of power. Courts may refuse to apply the chosen law if it contravenes local public policy or if the choice was not freely made.

The Role of International Conventions

International conventions, such as the Rome I Regulation in the European Union, codify the principle of party autonomy while also providing guidelines for resolving conflicts of law in cases where the parties have not made a choice. Under Rome I, the law chosen by the parties will generally apply, but certain mandatory rules of the forum state or the place of performance of the contract may override this choice.

Regulatory Law of the Contract Transformation

After analysing the contractual transformation, I think it is of great importance to clarify the transformation of the contract itself. There are several sources which gives numerous examples regarding this issue like the Civil Code, the contract doctrine is some of the sources. The cedim institution is one of the most typical cases which was foreseen by the civil legislation, and was also foreseen under article 53 of the law for private international law. At first, we should deal with the doctrinal aspect of such notion and later we should see which law is applicable.

After researching, I found that the rights and obligation pass from one person to another and may be changed due to universal or particular succession. In the case of universal succession, the transition of rights and obligation from one person to another is done in general, through a single action in relation to his whole wealth or a part of it. On the other hand, in the case of particular succession, the transfer of obligation from one person to another is done by special actions that are detached from the other part of the creditors or debtor's wealth. In this aspect I found myself in front of credit cedim or undertaking the obligation, which are dealt with in another matter and are not related to my subject matter. I can conclude that synthesis is the new judicial action, which has a contractual nature and it undergoes its regulatory law. If a strictu sensu interpretation is made, of course only focusing on the law related to my subject matter. We must also focus on article 53 which deals with the legal substitution. The basic idea that transmits concerns to all those cases, whereby on the basis of contractual obligations, the creditor has the right over the debtor and third party is obliged to clear the credit,

then the mutatis mutandis will be applied even for the definition of the measure and cause for the reason that why does a third party has the same powers over the debtor that the creditor also has over the debtor.

Civil Code and the obligation and contracts doctrine gives us numerous examples regarding this issue, but for methodological reasons we shall analyse the cedim institution as one of the most typical cases foreseen by our civil legislation, and also foreseen under Article 53 of the law for private international law. At first, we shall deal with the doctrinal aspect of such notion and then later we shall see which law is applicable in case of a legal collision. It may happen that the rights and obligation pass on from one person to the other, and may be changed because of the universal or particular succession7. In the case of universal succession, the transition of rights and obligations of the creditor or debtor from one person to another is done in general, through a single action in relation to his whole wealth or part of it. A cause for something similar may be for example the joining of some commercial societies. In such cases, the wealth of one party is transferred in total to the third one, including his own assets and else. On the particular succession, the rights and obligations of a defined obligation agreement are transferred from one of the parties to a third person, through special actions that are detached from the other part of the creditor or debtor's wealth. In this aspect, we may find ourselves in front of credit cedim or undertaking the obligation, which are dealt with in another matter and are not actual object of this theme.

Determining the Applicable Law in Absence of Choice

Default Rules

In cases where the parties have not made a clear choice of law, courts apply default rules to determine the applicable law. Different legal systems use different methods to resolve this issue. Under common law, courts often look to the "closest connection" or the "center of gravity" of the contract to determine the applicable law. In civil law systems, like those in many European countries, the governing law is determined based on the type of contract or the habitual residence of the parties.

Rome 1 Regulation and Default Rules

The Rome I Regulation offers a detailed set of rules to determine the applicable law when no choice is made. For instance, under Article 4, contracts for the sale of goods are governed by the law of the seller's habitual residence, while contracts for the provision of services are governed by the law of the service provider's habitual residence.

The Role of Mandatory Rules

Mandatory rules are those that cannot be derogated from by agreement between the parties. These rules often reflect fundamental values or public policy considerations within a legal system. Courts may apply mandatory rules of their own jurisdiction, or even of a third country closely connected to the dispute, irrespective of the law chosen by the parties.

Resolving Conflicts in International Contracts

Judicial Approaches

When contractual obligations are in dispute, courts employ various methods to resolve conflicts of law. The key factors considered include the intentions of the parties, the place of performance of the contract, and the legal system most closely connected to the transaction. Courts may also consider the principle of "lex loci contractus" (the law of the place where the contract was made) or "lex loci solutionis" (the law of the place where the contract is to be performed).

Arbitration and Conflict of Laws

Arbitral tribunals have greater flexibility in applying conflict-of-laws rules. Many arbitration agreements expressly allow the tribunal to determine the applicable law, and in the absence of an agreement, the tribunal will typically apply the law most closely connected to the contract.

International Instruments and Harmonization

The Hague Principles on Choice of Law in International Commercial Contracts

The Hague Principles aim to promote uniformity and predictability in cross-border contracts by reinforcing the principle of party autonomy. They provide model rules that can be adopted by countries to guide the resolution of conflict-of-laws issues in contractual obligations.

The Role of the United Nations Convention on Contracts for the International Sale of Goods (CISG)

The CISG provides a uniform framework for international sales contracts and often displaces the need for conflict-of-law rules in these types of contracts. However, the CISG does not cover all aspects of contractual obligations, and courts must still apply conflict-of-laws principles to resolve certain issues, such as the validity of the contract.

Conclusion

Going through a deductive synthesis process, I can finally conclude over some important aspects that have been introduced in this theoretical and practical work over the contractual obligations regulated according to the 'International Private Law'. Initially this work dealt with the autonomy principle of will, as a substantial principle which makes the corpus of the regulation of the contractual obligations, in stipulations that the parties make to each other in order to create, amend or destroy a certain judicial relationship.

Like other ways to get involved into the relationship of parties, I also treated the criterion of common nationality, as well as the principle of regulatory law for the transformation of the contract. The issue of contractual obligations in conflict of laws is complex and multifaceted, reflecting the diversity of legal systems and the intricacies of cross-border transactions. The principle of party autonomy plays a central role in determining the applicable law, but this principle is tempered by considerations of public policy and fairness, especially in contracts involving weaker parties. International conventions, such as the Rome I Regulation and the Hague Principles, have significantly contributed to harmonizing approaches to conflict-of-laws issues, promoting legal certainty and reducing the potential for disputes. As cross-border commerce continues to expand, the need for coherent, predictable, and fair conflict-of-laws rules will only become more pressing.

References

- Rome I Regulation (Regulation (EC) No 593/2008)
- Hague Principles on Choice of Law in International Commercial Contracts
- United Nations Convention on Contracts for the International Sale of Goods (CISG)
- Dicey, Morris & Collins on the Conflict of Laws, 15th Edition
- Cheshire, North & Fawcett, Private International Law, 14th Edition
- Symeonides, S.C., "Party Autonomy in International Contracts and the Multiple Ways of Slicing the Apple," Brooklyn Journal of International Law, 2000.