



V-LRN

VIRTUAL LEARNING NETWORK



International Business Environment

Block-4

Unit-15

The Proper Law Of The Contract Or The Lex Causae

Virtual Learning Network

Topics to be Covered

Introduction

The proper law of the Contract

Qualification of the proper law

Application of Lex Causae to Sale of Goods

Standardized Export Sales Contract

Summary

Introduction

- In case of international contracts between parties belonging to different countries and legal regimes, the law applicable is the Proper Law of the Contract (PLC) or Lex Causae.
- The PLC may be the exporter's or importer's country law or even a third country law which are national laws.

Proper Law

- In the conflict of laws, *lex causae* is the law or laws chosen by the court from among the relevant legal systems to arrive at its judgment of an international or inter-jurisdictional case.
- Substantive law applicable where conflict of laws occurs, or which determines under which jurisdiction or system of law a case should be heard



The Proper Law of The Contract When Choice Of Law Clause Existing Or Present In The Contract

- Conflict of laws regulates all lawsuits involving "foreign" law, where the outcome of a legal action will differ based on which laws are applied. Once the forum court has ruled that it has jurisdiction to hear the case, it must then decide which of the possible laws are to be applied.



The Proper Law Of The Contract When Choice Of Law Clause Existing Or Present In The Contract (Contd.)

- Based on the decisions of the English Courts and the provisions of English Law and American jurisprudence the limitations have been laid down which can be said as generally applicable.
- The chosen foreign law should not offend or should not be offensive to English Public Policy.
- Chosen law shall yield to or be subject to an English statutory law as the *lex fori* (law of forum) to the extent to which statute expressly so provides (say for example, English Unfair Contract Terms Act 1977).



The Proper Law Of The Contract When Choice Of Law Clause Existing Or Present In The Contract (Contd.)

- Chosen foreign law should not go against the mandatory provisions or rules of the lex fori which are of such a compelling character that the English courts will apply regardless of the proper law.
- The parties may be free to choose the law of a place having no connection with the contract yet the choice must be bona fide and legal.
- The chosen law will not be applicable and enforceable if the performance of the contract is unlawful by the lex loci solutions (law of the intended place of performance of the contract).



The Proper Law of the Contract when choice of Law Clause not existing or Absent in the Contract

- **In cases where the choice of law clause is not existing or absent in the contract including ESC (export sales contract), it is considered essential as a first step, to find out the intention of the contracting parties from the various contract documents and even otherwise regarding the applicable law. If the intention of the parties is apparent or can be inferred the intended law will be the PLC or applicable law.**





The Proper Law of the Contract when choice of Law Clause not existing or Absent in the Contract (Contd.)

- In case where the contract is silent as to the applicable law and the intention of the parties is not apparent or cannot be inferred or deduced the “Conflict of Laws” principles will be applied to determine the PLC.
- Each country has formulated its conflict of laws rules to provide an overall guidance to the courts on this question.

The Proper Law of the Contract when choice of Law Clause not existing or Absent in the Contract (Contd.)

- The main task is to identify the 'center of gravity' i.e. the state having the closest connection with the contract. Here the courts have tried to avoid a purely mechanical test. They have taken many facts into account or consideration like the place where the contract was concluded, the places of business of the parties, the contractual place or places of performance, the nature and subject matter of the contract etc.





The Proper Law of the Contract when choice of Law Clause not existing or Absent in the Contract (Contd.)

- In the process of identifying the closely connecting factor the courts have given greater weightage to certain factors compared to others. Accordingly the lex loci solution is or the law of the place of intended performance of the contract was considered to be the most important and was given greater weightage.
- Prima facie lex loci solution is was considered having closer or greater connection with the contract.





Lex Loci Solutions

- The lex loci solutions is the Latin term for "law of the place where relevant performance occurs" in the Conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied. The *lex loci solution's* is one of the possible choice of law rules applied to cases testing the validity of a contract and in tort cases.



Qualifications of the Proper Law

- The most important aspects of a contract is the law expressly or impliedly selected by the parties or where their choice is not clear
- According to some English authors, the proper law is not of universal application. The definition & location of connecting factor, procedural law etc. are matters of *lex fori*.
- A contract can also be considered formally valid if it satisfies the formalities prescribed by the *lex loci* (the law of the country in which a transaction is performed) contract us even if it does not meet those of proper law.



Application of Lex Causae to Sale Of Goods

- According to Professor Goode the general principles explained earlier on lex causae in contracts, most of the contractual aspects of a contract for the sale of goods are governed by the proper law of the contract. In the absence of an express or implied choice of law by the parties the law of the seller's principal place of business will be applicable law or lex causae.



Application of Lex Causae to Sale Of Goods (Contd.)

- But the proprietary aspects of a contract for the sale of goods including the capacity to transfer, formalities of a valid transfer, its essential validity, the time of the passing of the property, location of title etc. will be determined by the lex situs, that is the law of the place where goods are situated at the time of the contract.

Application of Lex Causae to Sale Of Goods (Contd.)

- According to the general principle to the forum should recognize a title validity acquired under the lex situs and should refuse to accept a claim to ownership not recognized by the lex situs, even if a different result would have been reached under the lex fori.





Standardized Export Sales Contract

- All export transactions are legalized through contracts called export sales contract (ESC) and formalized through written agreements containing standard terms & conditions.
- ESC is applicable, if the product is standardized one, such as garments, handicrafts, light engineering products etc. The standardized terms & conditions can be evolved & adopted with or without some changes each time a contract is drafted.



Elements of Export Sales Contract

- It is a contract between two distinct parties
- Goods which form the subject matter of the contract must be movables .
- The exporter transfers or agrees to transfer the property in the goods to the importer.
- The transfer of property in the goods from the exporter to the importer is for consideration which must be money called price.
- The essential elements of a certainty of meaning etc. are also applicable to ESC.

Export Sales Contract

- Export sales contract is formed by offer by one party and its acceptance by the other party. The contract is made in writing or by word of mouth or partly in writing and partly by word of mouth. The contract may also be implied from the conduct of the parties or from the course of dealing between the parties. Although oral contracts are valid, it is always safe and secure to have a formal written contract.

Difference b/w ESC & DSC

- Although the essential elements of a valid ESC and that of the DSC are same still there appears to be some differences, between the two contracts.
- This is mainly because all export sales have a foreign element which is absent in all domestic sales.
- The ESC involves parties who are called exporter and importer belonging to different countries.
- The price under the ESC is quoted and realized in foreign currency.

Principal Provisions of ESC

- The ESC needs to be comprehensive in terms of both structure and contents to avoid and or reduce the possibility of any differences and disputes between the parties which may arise due to various omissions and commissions .



Model or Standardized Export Sales Contract

- Export Sales Contract vary from product to product hence, it is difficult to prescribe a standardized or model ESC , applicable to all products and under all circumstances .

Summary

- International contracts are governed by the proper law of the contract which may not or may be the relevant national laws depending upon the presence or absence of a choice of law in a contract.
- The Export sales contract should be comprehensive in terms of both structure and contents to avoid and/ or reduce the possibility of any differences and disputes between parties.

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