Principles on Choice of Law in International Commercial Contracts (Hague Principles)

Submitted by: HCCH
Party Autonomy in International Trade

What does international trade need?

How to achieve certainty and predictability in international trade?

What is the status of party autonomy in choice of law in international commercial contracts?

Certainty and predictability enhancing effectiveness of the transactions, reducing costs

Parties’ choices are respected (Party Autonomy)

Widely, but not universally accepted; different practices

What is the status of party autonomy in choice of law in international commercial contracts?
The Hague Principles in a nutshell

• First normative *soft-law* instrument developed by the HCCH; first drawn up by Working Group, then approved by Members of HCCH on 19 March 2015

• A “package” consisting of Preamble and 12 Articles, with an Introduction and a Commentary

• Designed to promote party autonomy in international commercial contracts
  - By acknowledging that parties to a contract may be best positioned to determine which set of legal norms is most suitable for their transaction, party autonomy enhances *predictability* and *legal certainty* – important conditions for effective cross-border trade and commerce

• Hague Principles also set balanced boundaries
  - provide a refinement of the concept of party autonomy where it is already accepted

• In essence, Principles may be considered an *international code of current best practice* in relation to party autonomy in international commercial contracts

• They provide a comprehensive blueprint to guide users in the creation, reform, or interpretation of choice of law regimes at the national, regional, or international level

Main Provisions

- Freedom to choose the applicable law (*Art. 2(1)*)
- Different laws governing different parts of the contract (*Art. 2(2)*)
- Modification of the applicable law at any time (*Art. 2(3)*)
- No connection to the transaction or the parties needed (*Art. 2(4)*)
- Expressly or tacitly choose the applicable law (*Art. 4*)
- No requirement as to the form of choice of law (*Art. 5*)
- Requiring consent (*Art. 6(2)*)

Note that the Principles do *not* provide a unified conflicts rules for applicable law *in the absence of a choice*
Other Important Provisions

Choosing Non-State Law

Art. 3
May select rules that are:
• generally accepted on an international, supranational or regional level
• neutral and balanced set of rules,
• unless the law of the forum provides otherwise
When selecting non-State law:
• “gap filling” law may be needed

Standard Terms and Battle of Forms

Art. 6
• Providing rules for two sets of standard form which are conflicting (battle of forms)
• Limited exception clause

Standard Terms and Battle of Forms
(Art. 6)

2 sets of standard form of contract (SFC)
Laws A and B (First shot/last shot/knock out)

A & B first shot → A or
A & B last shot → B

A and B each knock out

A knock out
B last (first) shot (or reverse)

A leads to A
B leads to B

False conflict
A’s/B’s choice of law applies

False conflict
None apply; No choice of law

True conflict
None apply; No choice of law
Limitation of the Choice of Law

Choice of law
- Public policy
- Overriding mandatory rules
- Consolidated in Article 11
- Specific rules for either adjudication by courts or arbitral tribunals
- Reference to the mandatory provisions of the law of the forum and those of the law of another State

Early Achievements

20 January 2015
- Paraguay promulgated Law No 5393 on the Law Applicable to International Contracts, based on the Hague Principles

8 July 2015
- UNCITRAL endorses the Principles during its Forty-eighth session
- First HCCH instrument officially endorsed by UNCITRAL