



Deeply Analysis on French Rules of Conflict of Laws

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Author's contribution

The sole author designed, analysed, interpreted and prepared the manuscript.

Article Information

DOI: 10.9734/ARJASS/2019/v9i230122

Editor(s):

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Complete Peer review History: <http://www.sdiarticle3.com/review-history/48717>

Received 26 February 2019

Accepted 09 May 2019

Published 13 August 2019

Original Research Article

ABSTRACT

The law, in a general way, has the role of regulating life in society. From this same Law, several rights with branches facilitate their explanation and use in our social life to establish order. This being life in society could be seen as a kind of contract to the extent that it would be difficult for the individual to live without maintaining relationships with others. So, from the moment that there is this exchange between individuals there is what we could call contract. As we know, the contract is defined in law as an agreement by which one or more persons agree to one or more other persons to give, do or not to do something. It should also be specified that there are several kinds of contracts, but the one that will be the main focus of our development is the international contract. An international contract is understood to mean this contract, which, unlike the internal contract, presents an element of extraneity, in other words an international character. For example, a contract between two individuals of different nationality. The contract thus concluded, the contracting parties may indeed encounter difficulties that may arise at any time, most often due to non-compliance with the terms of the contract. These problems or disputes are often very difficult to resolve because the parties are from different origins, residing in different countries, or bound by commitments made in a country other than their country of residence, hence the existence of different laws. and the birth of what is called a conflict of laws. This being so, by conflict of laws is meant to be one of the main problems with private international law (the branch of law which deals with the settlement of disputes of private rights having at least an extraneous character). Thus, the question arises as to which law would be applicable in the

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event of a conflict of laws in the matter of contract, that is, how to choose or determine the applicable law in the course of a dispute with a foreign element? Thus, once the French judge is seized of the dispute, it will be necessary to find the law applicable to the questions of law asked. Assuming that the French judge can apply a foreign law, and that the various foreign laws with links to the litigation have a theoretical vocation to apply, were developed what are called conflict of laws rules which is an abstract rule, indirect (it does not solve the substantive question asked, but only to determine the law competent to resolve this substantive legal issue), and neutral (the substantive solution is not taken into account in the determination of the applicable law). In order to give answers to our questioning, we will focus on how to choose the law applicable to conflict of laws in matters of contract and this, in the light of French law, the Rome Convention of 19 June 1980 and the Rome 1 Regulation on the law applicable to international contractual obligations.

Keywords: Analysis; French rules; conflict of laws.

1. INTRODUCTION

By conflict of laws, we mean private international law which is the area of law which deals with the settlement of disputes over private rights having at least a foreign character, whether the parties are of different nationalities, reside in different countries or are bound by commitments made in a country other than their country of residence [1].

Thus, the conflict that is the subject of this thesis is the conflict of laws in matters of contract. In French law, conflicts of law in matters of contract are defined as that part of private international law which makes it possible to determine which law will be applied in the course of a dispute presenting, at least, an element of foreign nationality is the implementation of a number of legal mechanisms? Thus, for example, the international nature of the contract will allow the location of the contract in a foreign legal order. Or, some rules are only applicable to international contracts (eg exchange guarantee clauses that guarantee the parties against currency fluctuations). To determine the international character of the contract, one always quotes the Attorney General Matter who, in a judgment rendered on 17/05/1927, said that international is the contract which includes a flow and a reflux over the borders. He argued for an economic criterion (flow, crossing borders) to determine the international character of the contract [2].

Subsequently, we went much further by admitting more broadly the international concept because the jurisprudence has considered that international is the contract that involves the interests of International Trade.

This economic criterion has been criticized because judgments have accepted a more legal

criterion (1971 judgment): for the contract to be international, the headquarters of both parties must be located in two different countries. Same thing in another judgment of 1981, considering that the contract was international as long as the nationality of the parties was different. This exclusively legal criterion has itself provoked criticism because in certain cases, the parties may have a different nationality but have their domicile in France and carry out an operation within the French borders. This situation is not extremely common.

This question of the international character of the contract is no longer really a matter of debate: after having been tempted to adopt a legal criterion, French case law has come more to an essentially economic criterion, as in the Vienna Convention on the sale of goods.

We have a new interrogation born from the Rome Convention of 1980 on the law applicable to the contractual obligations and the community regulation of June 2008 since they apply in case of conflict of laws of conflict of laws. A certain number of authors are on the possible return of the legal criterion.

Thus, once the French judge is seized of the dispute, it will be necessary to find the law applicable to the questions of law asked. Assuming that the French judge can apply a foreign law, and that the various foreign laws with links to the litigation have a theoretical vocation to apply, have been developed conflict of laws rules. They present general characters.

Whether the contract is national or international, it is subject to the same basic mechanisms (Article 1108 of the Civil Code). The international contract, however, has a number of particularities, the first of which is the existence of the conflict of laws.

The existence of a Conflict of Laws in contractual matters first requires that the contract be international. If so, determine the applicable law to which this contract will obey. It should be remembered that the resolution of the Conflict of Laws is largely influenced by the existence of convention.

Where a contract is concluded by parties who do not have the same nationality, an election relating to the applicable law may be made upstream according to the Rome Convention of 19 June 1980 (the "Rome Convention"). In the absence of choice, the Rome Convention recognizes as applicable law that of the country with which there is the closest connection.

This being so, we cannot deal with this thesis without defining what the international contract is and what relationship it has with conflicts of laws. Similarly, we cannot go forward without understanding the French rules of conflict of laws, which we are going to apply to find the applicable law to propose according to the law and according to our understanding of the subject, methods of resolving conflicts of laws. contract laws and all this in the light of the Rome Convention on the Law Applicable to Contractual Obligations is an international convention signed within the framework of the European Community and which aims at determining the law applicable to the contractual obligations and retains for this purpose a dualist system, setting as a principle the autonomy of the will and then as subsidiary connection of the objective criteria [3].

2. DEFINITION OF BASIC CONCEPTS OF CONFLICT OF LAWS IN FRENCH LAW

We cannot talk about conflict of laws in the field of contract without talking about private international law which is the branch of law which studies the settlement of private rights disputes having at least an extraneous character, that the parties are of nationalities different, reside in different countries, or are bound by commitments made in a country other than their country of residence. In other words, private international law in civil law systems consists of all the principles, usages or conventions which govern the legal relations established between persons governed by the laws of different States. In this sense, it can be described as an instrument for managing the diversity of rights. This is a situation of conflict of national laws caused by an element of foreignness in the application of

private law situations. In the case of relations between States, the applicable law is public international law [4,5]. Note that the term "state" does not include only sovereign states or countries and may also refer to conflicts of law between different states. For example, since Canada is a federal state in which the provinces have the power to legislate in private law, when there are conflicts of law caused by an element of foreign nationality, we are talking about international law. The term State therefore refers to the State that has sovereignty in a particular area, be it the central state or the federated state.

The objective of private international law is therefore to determine in which country the dispute is to be judged: this is a conflict of jurisdiction but also which country is the applicable law: it is the conflict of law. are different, the courts of one country may be required to apply the law of another country. French textbooks also often add a section dealing with subjects of law, including the law of nationality and the status of foreigners.

It should be noted that private international law also organizes the recognition and application of jurisdictional decisions from another country in the world. The main problems with private international law are: the conflict of jurisdictions, which is subdivided into two distinct issues: international jurisdiction (in which country can the dispute be judged?), And the recognition of foreign decisions and the conflict of laws (what is the legal order - the country - whose law applies).

The two questions are quite distinct, the courts of one country may have to apply the law of another country. French textbooks also often add a section dealing with subjects of law, including the law of nationality and the status of foreigners. Despite its name, private international law is not uniform. There is a French private international law, a German private international law, and so on. The subject of this thesis is private international law in France [6].

Roman law is the first legal system to have organized private international law. Very quickly, the Romans made the distinction between the law applicable to the Roman citizenship and that applied to the foreigners (this right was applied initially by a particular judge, it has for mission to choose the applicable law).

At the beginning of the Middle Ages, the principle of the personality of the laws was consecrated which implies the application of a variable law

according to the ethnic origin. This vision of things will be taken up again in France with the French colonies. Everything changes in the Middle Ages with the feudal era: things will freeze as a result of the stabilization of populations, the impoverishment of trade. This fixation is accompanied by a fragmentation of power that leads to an attachment to the land and leads to the birth of the notion of territory: the personality of the laws will succeed the principle of the territoriality of the laws (we have the law of his territory) [4].

The transition from one principle to another will lead to a considerable erosion that will give rise to customs for each territory. From there, the jurists will reflect on how we can articulate the different customs between them: "d'Argentré" (1519-1590), president of the presidia of Rennes. He is one of the main artisans of the "New Brittany Custom", a legal source applicable in Brittany, solemnly published in 1580. In the spirit, he defends the originality of the provincial law, and fights against the influence of the rights French and Roman. It assumes that a custom will not have an effect on the neighboring territory. It will distinguish between real and personal customs: real customs have a territorialism expression and personal customs may have some extraterritoriality.

The real customs are the most important, the home is the main connecting factor since nationality and nation are still fuzzy concepts [7].

The notion of a subject of law does not yet exist (appears in the eighteenth century) The territoriality makes the conflict of laws possible. As the historical evolution of our society evolves, the principle of territoriality will be coupled with that of sovereignty. Therefore, the one who says the law is the judge seized (law of the forum). Argentré's theory is the first really coherent theory in France that will then touch Holland and the Anglo-Saxon countries. In a much more efficient way, the Voet brothers will take up Argentré's theory but systematically couple the principle of territoriality with that of sovereignty.

From the Middle Ages and parallel to this political vision Develops an economic vision that sees the proliferation of private sources through the exchanges between Flanders and the North of Italy, which leads in particular to the development of the bill of exchange.

Things will change a lot in the nineteenth century: the world changes and discovered after the

French Revolution the notion of subject of law. Things were ripe for Friedrich Carl von Savigny to publish a treaty in several volumes, in 1849. One of the parts of this treaty of Roman law will completely change the global DIP by providing new bases, so much so that some commentators were able to speak of "revolution".

Research of the development of international exchanges: He is very anchored on Roman law and his idea is that there is a community of thought in Europe, a community of civilizations, of economic system. He concludes that we need to find a conflict resolution method that is stable, undisputed, secure and acceptable in a world in the process of internationalization [8].

We must not worry about the authority that lays the rule, but we must find the most reasonable solution by conducting "the analysis of each type of legal relationship to apply the law most consistent with its own nature [9]. and essential. "For each class of legal relationship, it is necessary to determine the area to which it belongs, the seat of the legal relationship".

This Savinian construction will be applied to the rule of law conflict and this conflictual system will spread all over the world. In the latter case, the harm suffered by an individual most often involves a medical cost which, in the context of private international law, puts the legal security of the individual at risk, with some States compensating in a less suffered within their internal tort system. The American challenge will come from the tort liability in terms of accident. The rule of conflict of law in this area is "lex loci delicti" (literally "the law of the place of the offense"). Thus, the American "point of contact theory" was born and initiated a conflict movement because the rule of abstract conflict does not take into account all the political elements of a situation.

Talking about conflicts of laws leads us to ask ourselves: what law would be applicable to resolve contractual disputes? In other words, the object of our subject will be to study the conflicts of laws in contractual matters. Thus, a conflict of laws is understood whenever a legal situation can be related to several countries. It would then be necessary to choose between these different States the law which will be called upon to regulate the relation of Right considered. It should be pointed out here that it is therefore a question of option that arises. Other questions could then arise: How to avoid this kind of contractual disputes? Can the parties to an

(international) contract freely choose the law that will apply to it?

What if they observe silence on the question of the applicable law? In the event of a conflict of laws, it is necessary to turn to the provisions of the European regulation called Rome I to answer these question [10].

When two trading partners negotiate a case, they instinctively ask themselves a series of key questions: what product to buy or sell, how much, what quality, what delivery system, and at what price? Concomitantly, there is often an unresolved issue that is equally essential, that of determining the applicable law that will govern the contract to be concluded and the obligations it will provide.

The European institutions had already dealt with the question of the determination of the applicable law in the "Convention on the law applicable to contractual obligations of 19 June 1980", known as the Rome Convention. They have groomed the rules of this Convention and transformed them into a Community instrument in the form of a European regulation directly applicable in the Member States by European Parliament, Regulation (EC) No 593/2008 and the Council Of 17 June 2008 on the applicable law to contractual obligations more Commonly known as the Rome I Regulation. The latter resolves conflicts of laws arising in contracts concluded since December 17, 2009 [3]. In order to treat our subject well so that it is understood and accessible to all, we refer to books as well as articles in order to draw a profile. It is because we have noticed that the notion of contractual conflict is still current. It is also to say that any contractual relationship gives rise to conflicts that may arise at a given moment [10].

As in some of the books on contractual obligations, we can see the choice of law rules that define the dispute between litigants; choice of law rules and a connecting factor and the general form of a legal category. This chapter will be concerned with the category legal of contract. Which system of legal rules is it to resolve the issue which has arisen? For example, the litigants may be disputed whether or not they have successfully performed the contract, or whether that party has a sufficient excuse for non-performance [11]. The litigants may be contesting a contract or the contract may be. A party to the contract may argue that it was not properly entered into written, or that the party

lacks capacity to conclude such a contract. The term of the contract relies upon being ineffective as being unfair to a consumer or employee. All these issues are clearly defined as being in the nature of a contract, or they may be categorized as evidentiary or as non-contractual.).The contractual choice of law is the multilateral and jurisdiction selecting. Therefore, the applicable law is a system of domestic law and it may be directly applicable to the law.

In the case of conflict-of-law books, they provide a clear and up-to-date account of the private international law topics covered in undergraduate courses [12]. Theoretical issues are presented in an accessible style while providing precision and clarity on complex points and terminology.

Conflict of laws area has undergone a profound change in recent decades. Now much of the subject is dominated by legislation, both European and domestic, rather than by case law. In practical terms, we note that issues relating to recognition and enforcement of judgments and to jurisdiction have taken center stage and choice of law.

This changing emphasis concerning international private law is fully reflected in these books. The authors provide detailed analyzes of the recognition and enforcement of foreign judgments, the most important commercial topics of civil jurisdiction, and the choice of law relating to contractual obligations. Involuntary introductions to the study of the contractual conflict, the conflict of laws and the survey of the law of private international law.

3. DEFINITION OF CONFLICT OF LAWS

As a branch of private international law, the conflict of laws is the part of the IPL that determines which law will be applied in a dispute with at least one foreign element. In other words, there is a conflict of laws whenever a legal situation may be related to several countries, it is necessary to choose, between the laws of these different states, the one that will be called upon to govern the legal relationship. Thus, once the French court is seized of the dispute, it will be appropriate to find the law applicable to the questions of law asked [9]. Assuming that the French judge can apply a foreign law, and that the various foreign laws with links to the litigation have a theoretical vocation to apply, have been developed conflict of laws rules. They present general characters. The conflict of laws rule is an abstract, indirect rule (it does not resolve the

substantive question raised, but only to determine the law competent to resolve this substantive legal issue), and neutral (the substantive solution is not taken into account in the determination of the applicable law). French private international law is composed of conflict of laws rules emanating from international instruments (convention and treaty), the law (Article 3 of the Civil Code), or case law.

An example of a rule of conflict of laws: "The conditions of substantive validity of marriage are determined by the personal law of the spouses" (Article 3.c.civ, CA Paris, February 2, 1956, JCP 1956, II.9229, note PG). In other words, the law applicable to the substantive conditions of marriage in the event of a dispute brought before the French court is the law of the country of which the spouse concerned by the dispute originates. On the other hand, and on the other hand, the formal conditions of marriage are determined by the law of the place where the marriage is celebrated. In practice, a polygamous marriage celebrated abroad can still produce some effects in France, where polygamy is however strictly prohibited by law.

On this we ask ourselves the question of how to settle a conflict of laws? Two broad approaches can be considered by states to resolve a conflict of laws.

The first is the implementation of material private international law rules, and the second is the enactment of conflict rules. The rules of substantive private international law are substantive rules, often in the form of international treaties, which are intended to apply when a situation, with elements of foreignness, can thus be characterized as an international situation [13]. It falls within the scope of the Treaty. The interest of a substantive rule of private international law is that, because of its substantive character, it directly gives the solution of the dispute. It is no longer necessary to take the detour of a rule of conflict and the solution of the dispute can be obtained much more easily.

4. SOLUTIONS OF THE ROME CONVENTION OF JUNE 1980

Article 1 (1) of the Convention declares the provisions of this Convention to be applicable in contractual conflict situations in situations of conflict of laws. But even though the expression in situations presenting a conflict of laws appears to constitute a periphrasis aimed at the

international contract, reading the rest of the text shows that it is not so. Article 3.3 indicates in fact somewhat laboriously that the choice by the parties of a foreign law, with or without a foreign court, cannot, when all other elements of the situation are located at the time this choice in one country, to undermine the provisions to which the law of this country does not allow to derogate by contract, hereinafter referred to as mandatory provisions.

It can be seen that the Rome Convention does not use the notion of an international contract to determine its scope. In fact, not only does it not give any definition of the international contract, but above all it agrees to apply to a contract whose elements are located in a single country. Such a contract is clearly capable of being purely internal. The real criterion of the Rome Convention is therefore a contract involving a conflict of law situation and not an international contract. But the decisive notion of a conflict of laws is subjective since it can be based solely on the parties' choice of a foreign law, even though the contract does not contain any foreign element in the traditional sense of the term. [7].

In practice, the Rome Convention applies, of course, to international contracts within the meaning of French private law (and most of the countries) presented above. But it also applies to internal contracts for which the parties have decided to designate a foreign law because, in doing so, the parties have provoked a conflict of laws within the meaning of the Convention. This solution, somewhat surprising, however, sees its scope singularly limited by the mention of the provisions to which it is not permissible to derogate by contract (mandatory provisions of the domestic law of the country), to which the choice of law foreign to the supplementary provisions of the law of the internal contract) lead to doubts about the usefulness of a text which legitimizes the choice of a foreign law for an internal contract.

5. DEFINITION OF DOMICILE AND NATIONALITY IN FRENCH LAW

Domicile plays a very important role in the Conflict of Laws of England and the United States and it occupied a like role in France until the adoption of the French Civil Code, which introduced into the French Conflict of Laws the rule that status and capacity were to be governed henceforth by the law of the country to which the party in question owed allegiance. Notwithstanding this innovation the notion of

domicile occupies still an important place in the French system of the Conflict of Laws, particularly in the matter of the jurisdiction of courts and in succession. It will be applied also as a subsidiary rule to questions affecting status and capacity if the national law of the party cannot be ascertained or the party is not a national of any country [14].

The term domicile is defined at article 102 of the Civil Code which provides: "The domicile of every Frenchman as to the enjoyment of his civil rights is at the place of his principal establishment." The central thought of domicile, according to this article, is "the principal establishment," whereas in Anglo-American law the ... court tends to predicate the existence of a domicile of choice upon the notion of "home." The conception of domicile in the two systems is, therefore, not identical. Domicile is regarded by the Court of Cassation as a question of fact, to be determined by the trial judge without control by the highest court. The decisions on the subject, relatively few in number, have done little to assign a more concrete meaning to the definition of domicile contained in the Code.

French "authorized" domicile. Article 13 of the French Civil Code, as amended by the law of June 26, 1889, provides: "An alien who has been authorized by decree to establish his domicile in France, shall have the enjoyment of all civil rights. "The effect of the authorization shall cease at the expiration of five years if the alien does not ask to be naturalized or if his application is rejected." Article 13 in its original form was intended, it seems, to create a status intermediate between that of citizen and foreigner, for a foreigner having obtained by decree the permission to establish a domicile in France was to be entitled to all civil rights.

As modified by the law of 1889, the effect of an authorized domicile is completely changed. It is to-day merely a step in the process of naturalization and is lost automatically if the application for naturalization is not made within five years subsequent to the decree, or such application is denied.

So, can a foreigner establish a domicile in France apart from the "authorized" domicile referred to in article 13 of the French Civil Code? To this question the Court of Cassation has given a negative answer. This conclusion is derived from the co-existence of articles 102 and 13 of the Civil Code. As the former speaks only of the domicile "of every Frenchman," the inference is

drawn that it must have been intended to exclude foreigners. It is urged also that if foreigners could establish a domicile without such authorization article 13 would be meaningless. Notwithstanding this, it is well recognized that a foreigner may have a de facto domicile in France. While it is not easy always to tell for what purposes such a domicile will have legal significance in the French system of the Conflict of Laws, it is certain that such a domicile is sufficient to confer jurisdiction on the French courts and for the application of the "renvoi" doctrine [15].

Much confusion has arisen in the matter of succession from the position taken by the French Court of Cassation. The personal estate of a citizen of the United States having only a de facto domicile in France must be distributed, it is said, in accordance with the law of his "legal" domicile, which would be the domicile he had before taking up his residence in France. Usually this will amount to an application of his national law. In view of the fact, however, that the French courts understand these rules of the Conflict of Laws in matters of succession as referring to the foreign law inclusive of its Conflict of Laws, they actually distribute the personal property of an American citizen de facto domiciled in France, but formerly domiciled in the United States, in accordance with the local provisions of the French Civil Code. In this situation the same result is reached as if the French courts had applied the local law of the de facto domicile in the first place. The rule that the law of the "legal" domicile controls is of importance, however, with respect to French subjects domiciled in the United States. Their "legal" and de facto domiciles coincide, so that the personal property of a French subject domiciled in New York at the time of his death would be distributed in accordance with the New York statute of distribution.

The term domicile has other definitions: Domicile for political and fiscal purposes, commercial domicile.

At the time of the enactment of the Civil Code a person might have a special political domicile, apart from his general domicile, by registration in a commune and residence there for one year, which was lost also by one year's absence. This special political domicile exists no longer and under the existing law political rights must be exercised at the ordinary domicile. The Court of Cassation holds, however, that a French citizen may establish his domicile in a foreign country

without losing his French domicile for political purposes. For fiscal purposes, also, the notion of domicile may not coincide in all respects with the definition laid down by article 102 of the Civil Code.

Besides a "principal" domicile a person may have under certain circumstances a "special" domicile. The most noteworthy instance of this is the "commercial" domicile of a married woman. A woman takes her husband's domicile on marriage, which remains her principal domicile, but if she is authorized to engage in business, the place where her business is conducted will constitute her "commercial" domicile. Bankruptcy proceedings, for example, would have to be brought in this place, instead of at her principal domicile [16].

6. APPLICATION OF THE CONFLICT OF LAWS RULE IN FRANCE

There are 3 problems with the application of RCL: The use of RCL has not always been mandatory. How to know the content of the foreign law to apply? What are the safety valves to the application of foreign law?

6.1 Stricto Sensu Application of the Conflict of Laws Rule

6.1.1 Mandatory character of the conflict of laws rule

We must distinguish four hypotheses:

The judge applies a law which is not the good one but which gives a solution "equivalent" to the law designated by the RCL. The Court of Cassation refuses to break the judgment (judgment of 13 April 1999), surely for reasons of economy of means (if the result is the same, the problem of the rule applied is theoretical, in the absence of consequences practices, we will not bother the justice).

One of the parties invokes the law designated by the RCL -In this case, the judge is obliged to answer on pain of cassation for failure to answer conclusions (form of miscarriage of justice).A party may invoke RCL for the first time on appeal (NCPC Article 565: new legal justifications can be provided if the claims are the same).If one of the parties so requests, the judge is obliged to apply the RCL.

None of the parties invokes the law designated by the RCL .There is in the litigation an element of foreignness but the parts do not request the application of the RCL (oblivion sometimes altogether).

6.1.2 Realization of the rule of conflict of laws

The nature of the foreign law: legal fact or rule of law? The doctrine is divided.If it is a fact, the parties provide the proof and the discretion of the judges of the merits is sovereign.If it is a rule of law, the judge must look for it.

7. OBSTACLES TO THE APPLICATION OF THE CONFLICT OF LAWS RULE

7.1 Exceptions to Public Orders

An exception because it is contrary to the principle of neutrality of the RCL. A process ≠ police laws because the blocking is done in extremis, after the application of the RCL (for the laws of police, it is done even before the RCL).

International public order is narrower than internal public order (example: the age of majority may be ≠ in another country). There are 3 sources of public order: The principles of universal justice having in France an absolute international value (prohibition of slavery, no racial discrimination, ...). The political and social foundations of French civilization (monogamy, secularism, property, the binding force of contracts, the right to divorce and food ...). A goal of cohesion of the French society. Domestic legislative policies [5].

The foreign law designated by the RCL is rejected in favor of the law of the forum. But this eviction is partial (only for the point deemed shocking, not for all the dispute).

7.2 Fraud to the Law

It's simply the voluntary use of RCL to escape the application of the law.

7.2.1 Study case as example

Princess de Beaufremont judgment of March 18, 1878 (she changes her nationality in order to divorce).

Conditions of fraud two cumulative conditions:

A material element the voluntary and effective modification of a connecting element (nationality, domicile,) or the category of attachment (Caron judgment of March 20, 1985: transforming a building into movable property) The simulation is not a fraud.

An intentional element the objective abnormality of the modification is not enough with the abuse of right: it is necessary to prove the intention. The fraudulent intent must be the only one that caused the change [17].

Foreign law fraud is also sanctioned (this has not always been the case) because the case law sees a fraud RCL (French law).

Sanction Inopposability of the amendment to the French judge or nullity? Nullity is impossible (the French judge has no power to annul the decisions of a sovereign state in case of a change of nationality for example).

8. STUDY ON THE FRENCH COURTS

As seen above, certain suits relating to partnerships and corporations must be brought before the courts of the state where they have their seat (siege social). As regards all other suits by or against partnerships or corporations the ordinary rules relating to jurisdiction apply. Foreign corporations and partnerships are deemed to have a domicile in France if they have a branch there.

Articles 14 and 15 of the Civil Code embrace French partnerships and corporations as well as citizens and the limitations upon the jurisdiction of the French courts with respect foreigners are equally applicable to suits between foreign partnerships or corporations. Foreign corporations not authorized to do business in France cannot sue in the French courts but be sued therein.

9. JURISDICTION AND SERVICE OF PROCESS

As stated above, the jurisdiction of the French courts, even in personal actions is never based upon personal service of the defendant in the Anglo-American sense. For the validity of a judgment it is necessary, however, that the defendant should have been properly cited. Personal service is sufficient, though not

necessary. If no personal service is made, the rules for citing the defendant into court vary in accordance with his residence. If the defendant is domiciled in France or is a resident of France, the sheriff may leave the writ with someone at the defendant's residence.us If no relative or servant be found at the residence, he may leave it with a neighbor and if the neighbor is unwilling to accept it, with the mayor of the town.

If the defendant has no known domicile or residence in France but has a known foreign domicile, the writ must be served on the Procurer General, who must visa it and have it forwarded to the defendant through the Foreign Office. If the foreign domicile of the defendant is unknown, the writ may be nailed on the principal door of the court before which the suit is brought. The return day of the summons is fixed by law-with respect to residents in the United States it is two months and unless the legal requirements in this regard are strictly complied with ' the judgment is void.103 It is not necessary for the validity of the judgment, however, that the defendant shall have actually received notice of the pendency of the action before such return day. With respect to defendants living abroad it is sufficient that the writ was served upon the procurer General, who is deemed the defendant's agent for the purpose of receiving the writ [11].

10. INTERPRETATION OF THE CONFLICT OF LAWS RULE

Summary: To qualify is to classify a question of law in a category (condition of form, substance, effect, movable property ...). There are two problems:

Qualification conflict: The two legal systems involved have some qualification \neq of the legal question. \diamond According to which law are we going to qualify? (Some facts are qualified as substantive conditions in one country, form in another, RCL are \neq).

The conflict between the categories of attachment (the facts can fall into several categories, or none). Bartin (particularism) raises the first problem of the conflict of qualifications and proposes the qualification *lege fori*.

Study case: This is the Bartholo affair in 1889 (the fourth of the poor spouse in Anglo-Maltese law). Problem in this case: at the death of the

husband what are the rights of the widow on the buildings in France? if we see a problem of matrimonial property, it is the law of the first common domicile that applies (Malta). If one sees there a problem of succession, it is the situation of the buildings that prevails (France, nothing for the widow at the time) [18].

The solution of Rabel (German, 1933): to eliminate the conflicts of qualification by creating an international system of qualification. But impossible (too many cases).

The recognition of the *lege fori* qualification by the Court of Cassation: Caraslanis judgment of June 22, 1955 (the conflict of qualification must be decided "by the French judge according to the conceptions of French law").

The qualification in suborder: one faith the designated foreign law, one applies his own qualifications. Example: Stroganoff-Scherbatoff judgment (succession of a white Russian).

11. DETERMINATION OF THE APPLICABLE CONFLICT OF LAW RULE

We thus note three arguments in favor of the qualification *lege fori* 1- Respect the sovereignty of the State (Bartin). One should be interested in foreign law only if the law of the forum refers to it (thus one qualifies according to the law of the forum). But the DIP does not pose a problem of sovereignty (they are private interests). 2- At the qualification stage there is still no conflict of law since the foreign law is not yet designated (its competence is still doubtful). 3 - To qualify a situation is to interpret the law. The judge obeys the reasoning of the forum when he interprets. B / Disadvantages 1- Break of the unity of the foreign law (one amputates the foreign law of a part, which breaks its coherence, its spirit). 10 2- Risk of solutions according to the judges. But the purpose of the DIP is the permanence of situations (a man will be married in France but not in Greece!).

The qualification in suborder: one faith the designated foreign law, one applies his own qualifications. Example: Stroganoff-Scherbatoff judgment (succession of a white Russian).

12. INTERPRETATION OF THE FOREIGN CONFLICT RULE

When the French conflict rule has given jurisdiction to a foreign law, the French judge

must generally consult the provisions of foreign private international law. The French judge must interpret the foreign conflict rule to determine in which legal category the situation, and to which connecting factor it is subject. The French judge must then assess the terms of the foreign conflict rule, qualification and attachment, according to the conceptions of the foreign law. But, the Court of Cassation refuses to control the interpretation, given by the judges of the substance, foreign provisions of private international law. The forum conflict rule may give jurisdiction to the law of a foreign state to govern the legal situation. But, among the provisions of this law, there are material rules and provisions of private international law. It has been accepted that the forum conflict rule refers to the entire foreign legal order. Foreign provisions of private international law must therefore be taken into account. The seized judge consults the foreign conflict rule to determine whether it accepts the jurisdiction that has been recognized. When the foreign conflict rule admits its jurisdiction, the judge applies the provisions of foreign substantive law [9].

When the foreign conflict rule declines its jurisdiction, in favor of the law of the forum or the law of a third State, it speaks of a negative conflict of jurisdiction.

13. FOUR CHARACTERISTICS OF THE FRENCH CONFLICT RULE

13.1 Indirect Rule

Contrary to the material rules, it does not settle the substance of the conflict but fulfills an intermediate step (to designate the law that will settle the substance of the conflict). Example of a material provision: the Geneva Convention on International Contracts.

13.2 Bilateral Rule

The bilateral rule poses a criterion which will make it possible to designate as applicable the law of the forum or a determined foreign law (equality of opportunity). The unilateral rule, on the other hand, refers only to the law of the forum (it delimits its scope, beyond which it is the competence of a foreign law, but there is no criterion as to which).

The advantage of the conflict of laws rule is that it immediately designates the applicable foreign law, no need to fumble. And there is always an applicable law.

The disadvantages: non-respect of the sovereignty of the State (the judge of the forum who applies the bilateral rule does not look at whether the law designated by the RCL is competent or not) But unilateralism poses two problems: a long reasoning, complex detours, non-respect of sovereignty in case of conflict of law (this refers to the *lege fori*, so we sit on foreignness and sovereignty).

13.3 Abstract Rule

The Savignian RCL poses broad attachment categories, which lead to an automatic solution. Sometimes the designated law has little relation to the concrete situation. Examples: road accident involving French people and a tree in Spain. Crash of an airplane, the place of the crash is fortuitous or it determines the applicable law. Place of conclusion of a contract concluded on the net. Temperament: international conventions make derogations from the usual RCL in order to seek the law with which the situation has the closest ties. Examples:

- a. The Rome Convention of 19 June 1980 on Contracts: it is presumed that the applicable law is that of the place of performance, unless the judge considers that the situation has a closer relationship with another law.
- b. The Hague Convention of 4 May 1991 on traffic accidents: the *lex loci delicti* is rejected when the accident involves only one vehicle and is registered abroad. Driver's liability (place of registration), passenger's liability (habitual residence).

13.4 Neutral Rule

The neutrality of the RCL means that it does not look at the content or the objectives of the law to determine itself. -The control of the public order does not affect this neutrality since it is exercised after the RCL. A minimal control (only blocks the shocking laws).

14. FRENCH REGULATION OF INTERNATIONAL CONTRACTS

In proposing to undertake the study of the meaning of the method of conflict of laws in contractual matters, we do not intend to join our voice with those, mainly from overseas, who claim to repudiate this process of resolving questions. private international law, which they consider both too complex, too abstract, and

therefore powerless to provide satisfactory solutions in general.

It appeared to us that the authors who took an interest in the question, without distinction according to whether they rank among the defenders of the purest subjective theses, or that they affirm on the contrary the supremacy of the law on the contract, assigned The Lex contracted a role, and sometimes retained a conception of the identity of the latter, which ended in contradicting the appropriateness of this method to the subject. This is what we would like to establish in the following paragraph.

15. RATIONALE FOR CHOICE OF METHOD OF CONFLICT OF LAWS IN CONTRACTS

There is little doubt that the method of conflict of laws is inappropriate when the so-called conflicting laws are simply incorporated into the contract. According to this conception, that certain decisions of the court of cassation seem to have adopted, the contract does not need the support of any law to exist and develop its effects. It can therefore not be subject to any law. It must therefore be deduced that, if the parties referred to a given law, the purpose of the law is not to regulate their agreement, but simply to supplement it, as it would have been if they had in full copied the provisions. Consequently, any contradiction between the latter and the express stipulations of the contract cannot be solved by looking for what has been the actual intention of the parties.

Similarly, in the absence of an *electio juris* clause, one must ask whether the parties intended to exclude the application of any law, or if they contracted in contemplation of one of them that they simply omitted expressly designate.

In any event, the only question that arises is to discover, by interpretation, the exact will of the contractors, and not to resolve a conflict of laws. Thus, adherence to the dogma of the autonomy of the will, applied to international contracts, seems to have the logical consequence of excluding the conflicting method in this matter.

But the adoption of this method by the authors who assert the primacy of the law on the contract appears also singular when, more or less fully adhere to the theses of other others like Kelsen,

they define the contract as a legal norm, or as an act creating a legal norm, and consider that they derive their potential effectiveness from the legal order in which they are inserted or to which they are subject. On this point, in order to demonstrate that this option is not compatible with the application to the subject of the conflict of laws method, it is necessary to examine the consequences which attach to each of these two statements respectively.

16. QUESTIONING THE CHOICE OF CONTRACT CONFLICTS METHODOLOGY

In the statement that the contract is a legal standard, it is not the definition of the legality which in itself is the source of the methodological difficulties which interests us here. However, it seems to us necessary to clarify this notion, not only because its ambiguity may be the cause of confusion, but also because, in doing so, we will be able to make some adjustments useful to the understanding of our subsequent analyzes [19].

If one wants to keep the notion of legality a proper meaning, a relationship is legal because it is concerned by the rules of law. However, the difficulty is not solved. At most she moved. How is it necessary to understand that a relationship is concerned by the rules of law?

Here again, two answers are possible, depending on whether one considers the legal order in question, or on the contrary, or that of the relationship to govern itself, that is, to say that one thinks in terms of abstentions or voluntary shortcomings of the objective right or that one wonders about the modalities of its realization.

The most common conception starts from the legal order in question, or, to use an expression of the applicable private law: it is legal the situation that this right intends to regulate the one from which it is not interested. It is thus essentially, that are most frequently considered as falling into the latter category, *de facto* situations such as concubinage, *de facto* corporations, and perhaps even possession in good faith, as well as situations of friendships.

If, in order to reach the conclusion that a situation is concerned by the applicable private law, it cannot usefully be based on the indisputable will of the latter to govern this situation, it is necessary to question the means by which this

will can be realized. In other words, it is necessary to set the starting point for reasoning, no longer the area covered by the legal system in question but the procedure by which each question of law is apprehended by it.

In this respect, the situation which has come into contact with a given legal order will be legal. will be that which has remained beyond its reach. It is certainly this view that some authors have in mind when they say that "jurists do not measure how much the right is optional, even in the sectors they proclaim of public order, and consider finding the right to do so". Evidence in many olcases, such as concubinage, family relations or friendships etc., or individuals have more or less chosen to remain outside the law.

Thus, to accept the idea that the parties to a convention could place it outside the law, it should be made clear that such a solution is only possible if, at any time, the parties do not turn to a State jurisdiction where, according to this author, the judge thus seized would be led, by the sole effect of the standards of qualification which he should then apply, to confer on the lawless contract the jurisdiction which he lacks. The ultimate source of the legality of an international relationship is simultaneously in all States whose courts may be called upon to make a decision in its regard.

When it is said that the contract is a legal norm, or, more precisely, an act creating legal norms, a very particular conception of the law is retained.

For there, indeed, it is meant to signify that the contractual norm belongs to a legal order gives to the arrangement of which it participates. It is thus that in order to stick to the only internationalist doctrine an author like Mr. Gothot was able to write by the contract, the individuals introduce in their mutual relations the order that at another level, the law establishes between all members of a legal order. As much as a law, a contract therefore belongs to a legal order, in the sense that it constitutes one of the norms.

Through this, the legal order consists of a series of hierarchical norms at the lower end of which are contracts and individual acts. By contracting, the parties act as organs of the community, by virtue of the permission of the law, to which the norm, which results from their agreement, is by the same subordinate.

The criterion of the legality of a situation results from the fact that it relates to the law. More

precisely, a situation, an act, is legal because of the objective meaning given to it by law.

By this, we certainly do not want to oppose what is taken into consideration by law, and what is ignored by him. On the contrary, it is asserted that the law is not deficient, and that, consequently, it does not lose interest in any concrete situation. One only intends to distinguish the subjective meaning of the act or fact in question.

Indeed, if we have considered until now that the courts alone could ensure the connection of a given question with the legal order in question, and that, consequently, their decisions alone could be qualified as legal, it is because we have reasoned from phenomena of pure private law. But if we were to adopt a more global approach, we would propose the following definition of legality:

It is legal any situation constituted, and any standard enacted by the organs of a legal order determines.

17. CONCLUSION

The transposition of the classification established by Mr. Mayer to the contractual standards is a task made difficult by the diversity of both conventional figures and stipulations that may be contained therein. This is the reason why it may seem a good method to adopt a progressive mode of exposure for this purpose, which, starting from the simplest hypothesis, examines one by one the complicating to introduce oneself [20].

From the point of view that interests us here, the simplest hypothesis is certainly that of the instantaneous contract, such as a sale. The stipulations which fix the respective obligations of the parties are by no means general, nor, consequently, abstract but, on the contrary, individual: they concern the buyer or the seller, that is, a person normally identified. by name. Nor are they hypothetical, but rather categorical, in that they immediately modify the situation of the contracting parties by making them mutually creditor and debtor of each other.

No doubt some of their obligations are simply conditional. Thus, the seller will be held liable for hidden defects only if a vice of this nature affects the thing sold. But as we have said, the condition is not to be confused with the hypothesis of the

rule, because it does not correspond to a reference to a type of situation but is constituted by a concrete and individual event. In addition, the condition does not have the role, as the assumption to allow the identification of the recipient of the standard, because it is known: the seller. It provokes only, if it is realized, the birth, or rather the exigibility of the obligation of this one. The conventional stipulation is thus here most definitely a decision [21].

This conclusion is not called into question, when the contract is in successive execution, such as that which relates to the periodic supply of a determined product. This characteristic indeed does not result in making the stipulation permanent. On the contrary, the supplier's obligation is definitively established on the day of the contract; only its exigibility is staggered in time. It follows that in this hypothesis, the conventional norm, which remains equally individual, concrete and categorical, is still a decision.

The difficulties begin to appear only with respect to certain contracts with successive execution that occur between a plurality of parties, as shown by the example of the partnership agreement. In such a contract, the parties are not designated individually. They are only identified by reference to their abstract quality of associates. No doubt this circumstance is indifferent in itself, since it has been seen that, if the impersonality of the norm constituted a necessary character of the rule, it was sometimes also that of the collective decision. Only because it is intended to register in the long term, the contract of society does not intend to govern the situation of the only current associates. It must also be able to define the rights and obligations of all those who, in the future, and until the day of the dissolution of the group, will have this quality.

The concept of submitting a situation to a law is rarely used as part of the analysis conducted in terms of conflicts of jurisdiction; it is, on the other hand, very frequently used by those who apply the conflict of laws method. Thus, for example, the regime of property is subject to the law of the situation, or the establishment of filiation is in principle subject to the personal law of the mother.

Only the meaning of this concept of submission has evolved considerably as the very foundation that has been successively attributed to the conflict rule is modified. And there is no doubt

that a proposition that the contract is subject to a law, in the sense we have just released [22].

As has been recently shown, the retrospective examination of the doctrinal conceptions of the rule of conflict nowadays leads us to replace the classical opposition of universalists and particularists with the quarrel between the old and the modern.

We know that the universalist theses were intended to discover a principle of universal determination of the empire of national laws that was imposed on all legislators, while the particularisms intended to leave the care to the different states, each acting for his own account.

These doctrines, beyond the essential differences which can thus separate them, have as a common point to treat the conflicts of laws like conflicts of competences of the national legislators. And because it is always a matter of setting limits to the rule of law, private international law is fundamentally for them only a classification right [23].

In these circumstances, the concept of submission used to describe the existing relationship between the institution to be governed and the legal system designated by the rule of the forum can only reflect the idea of allegiance. A situation subject to a law is a situation to which this law is applicable because, by its nature, it belongs to it. But such an interpretation can only be valid insofar as it is accepted that the rule of conflict of laws thus has a purely restorative function of legislative powers.

There is no doubt, therefore, that this interpretation of the concept of submission is incapable of accounting for the one we have identified with regard to contracts. There is no longer here the idea of belonging that characterizes the link between the contractual norm and the legal order in which it participates, either the contracting parties and the system of which they constitute the organs. It would again be found that the method of conflict of laws is unfit for the regulation of international contracts.

On the other hand, the conflict of jurisdiction method could be used because the submission of the judge, as well as the decision he makes, to the law of the State which conferred on the first one his powers, is also a translation of an authority report. Unless the examination of the consequences of such a conclusion and its confrontation with the solutions of the positive

law is sufficient to demonstrate the evil basis of the assertion on which it rests from the submission of the contract to the law which governs it [24].

In the case of international contracts, can the solutions adopted by French case law really be presented as resulting, not from an arbitrary and necessarily incoherent application, both from the principle of autonomy, from the theory of localization and from police law, but the implementation of real bilateral conflict rules?

So far, we have limited ourselves to showing that an affirmative answer would be desirable, and technically possible. It must now be established that it would also be accurate. Still, it is perhaps not useless to specify, however, that this object which we fix to our investigations is exclusive of all others: our analyzes will concern the decisions rendered by the French courts; they will not deal with special contracts.

In other words, it will not be for us, to question each of these contracts and to consider all the difficulties they can generate in private international law to propose the solutions that are adapted to them. Besides that, such an undertaking would necessarily be deficient, if only because we can never exclude the appearance of new contractual figures, still unknown to our law, it would very appreciably exceed the object which, from the beginning, we have fixed our researches: a study of the methods used in French positive law to ensure the regulation of international contracts, we would move to the establishment of successive monographs dedicated to each of them. We will have to confine ourselves to examining the only contracts that have given rise to court decisions, and only from the point of view of the disputes they have actually caused. Only in this way will we be able to identify the processes by which these disputes will have been resolved by our courts [25].

COMPETING INTERESTS

Author has declared that no competing interests exist.

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