



Comparison of Theory of Multiplicity of Governing Laws on Contractual Obligations in US and EU Law

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Abstract

Nowadays, one of the basic issues that judges are faced by in dealing with claims related to international commercial contracts is determining the law governing the contract. Determining the law governing the contract is important in that the validity, and influence of the contract come from it, and also the limits of the rights and obligations of the parties in the contract. In a case that one party claims breach of contract by the other party, this is the governing law on the contract, which determines the guarantee of breach implementation and the method of compensating the obligee. In order to create economic prosperity and support the economic expectations of businessmen, industrialized and developed countries have identified the principle of free will in determining the governing law of the contract as the basic principle in the conflict resolution rules of their laws. These countries consider this principle to be enforceable to the extent that they allow the parties to term separate the contract and make multiple rules governing the contract. This approach is derived from the theory of "Depechage" in the conflict of laws. According to this theory, a legal subject can be divided into different parts and different laws can be applied to the different parts of that subject. It seems that this theory came to the minds of American and European lawyers due to the existence of federalism in America and the increasing commercial relations of private law entities in the European Union. For the first time, paragraph 1 of Article 3 of the Rome Convention explicitly listed this theory among the conflict resolution rules of the European Union. The (second) set of legal principles and provisions of the conflict of American laws, by accepting the principle of the sovereignty of the will in determining the governing law of the contract, brought the application of deprecation in contracts into the judicial procedure of the American courts. This research aims to pay more attention to the documented laws of this theory and its scope of application in American and European Union laws and to clarify the method of using this theory in domestic law. The authors of the present study seek to answer these questions: What is the exact concept of deprecation in American and European Union law? What is the document on the application of deprecation in the contractual obligations that is in front of the judge in American and European Union law? What is the field of application of this theory in contractual obligations in American and European Union law and what rules



govern the eligibility of the parties and the form of application of this theory in contractual obligations? Based on what law should the judge determine the existence or non-existence of the condition of deprecation and that the intention of the parties in deprecation was to apply the law of which country or countries? In the result of this study we will say that The difference between the application of depecege in American and European Union laws is that the judge in the United States separates the different parts of the dispute based on the judicial procedure in the common law, but in the European Union, this action of the judge is based on the codified laws. The application of depecege and the choice of the law governing the contract by the parties is a separate agreement from the original contract, and it is necessary for the judge to verify the legal system governing it in order to determine the outcome of the dispute. In American law, the judge must determine, based on the legal principles of the court, that they have expressed their will in applying the law and choosing the law that governs the contract without any defects and validly. Also, the persons' capacity to apply depecege in contractual obligations will be determined based on the law chosen by them, and if they have not chosen a law, based on the law of their normal residence. Regarding the law governing the form of application of depecege by the parties, the judge should pay attention to the law chosen by the parties and in the absence of choice of law, to the law of the place of execution of the contract. In the law of the European Union, based on Rome Regulation I, the validity of the intention and consent of each of the parties in the application of the application and the choice of the governing law is determined based on the law of his or her habitual residence. Also, the law of the place of conclusion of the contract will be the criterion regarding the capacity of persons in the application of depecege. Regarding the law that governs the form of the depacage agreement, if the parties or their representatives are in one country at the time of concluding the contract, it is sufficient to comply with the formal conditions of the selected law, and if they are in different countries at the time of concluding the contract, the minimum formal conditions prescribed in one of the local laws must be met. Respect the residence, place of conclusion or election.

Keywords: Law Governing Contract, Depecege, Contractual Obligations, Multiplicity of Governing Laws, Party Autonomy.



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