



Rules of Private International Law or Conflict of Laws Rules

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Rules to Determine Applicable Law

Substantive contract law is applied to facts to resolve contract disputes



Rules to Determine Applicable Law

First decide which substantive law applies

Easy in “domestic” dispute related to only one body of substantive law



Rules to Determine Applicable Law

When a transaction crosses jurisdictional borders, we are faced with multiple choices

“Rules of Private International Law” guide this choice (also known as “Conflict of Laws” rules)



A bit more on “terminology”

CISG (and many civil law jurisdictions)

Rules of private international law

CISG Articles 1 & 7



A bit more on “terminology”

UNCITRAL Model Law on International Commercial Arbitration
(and most common law jurisdictions)

Conflict of laws rules

ML Article 28



A bit more on “terminology”

“Law” versus “Rules of Law”

“Law” is that which is enacted by a sovereign

“Rules of law” includes any body of contract rules, e.g., UNIDROIT Principles



Choosing Applicable Law

The parties choice is generally given effect

Though courts generally restrict choice to “law”

While arbitral tribunals also allow “rules of law”

Either may limit based on certain “mandatory law”



Choosing Applicable Law

If parties fail to choose

Law most “closely connected” to contract, or law of party providing “characteristic performance”



Choosing Applicable Law

Multilateral approach should lead to consistent result

Generally law of seller in a sale of goods transaction

But chosen law may still be subject to certain “mandatory” law of another jurisdiction



Selection of “rules” for choice

Courts will generally apply conflict of law or private international law rules of the forum



Selection of “rules” for choice

When parties fail to select governing substantive law in arbitration proceedings:

Arbitrators choose conflicts rules, which are then used to choose substantive law

Or, in some cases, may skip the conflicts rules and choose substantive law directly



Summary

When a contract crosses national borders,
we must determine applicable substantive law



Summary

CISG avoids this in many circumstances, but not all
In deciding the applicable substantive law, we use:

Rules of private international law

Conflict of laws rules



Summary

In sale of goods, this is usually:

The law chosen by the parties; or if none is chosen

The law of the seller



