Harmonization and Diversification of Contract Conflicts
Abstract

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Conflict-of-law rules in contracts show a remarkable harmony among three jurisdictions; Japan, Korea and the EC have rules providing more party autonomy, specific contacts based on the characteristic performance, and protection for the consumers and workers. The United States could have joined in this trend if a sufficient number of states enacted the new choice-of-law rule introduced by § 1-301 of the UCC, which was ultimately replaced by the conservative rule.

In this article I have highlighted the converging rules in Japan, Korea and Europe, contrasting the divergent trend in the United States. This approach needs two qualifications.

First it may be possible that a deeper and more functional analysis of the principles of American contract conflicts vis-à-vis rules of private international law of other countries may present a more harmonious picture. Second if we turn our eyes to other business related fields in conflict of laws, such as the assignment of receivables and rights in securities, conflict-of-law rules of the UCC have led the harmonization trend of the developed economies. It is ironic that though these American initiatives have produced new conflict-of-law rules proposals in international legal instruments, they have not been adopted by Japan and the EC.

The traditional goal of private international law is to harmonize conflict-of-law rules for the enhancement of international harmonization of judgments. It is true that this goal was based on the relatively homogeneous legal community in 19th century Europe. However as the divergence of the United States shows, the unification goal does not presuppose the existence of the internal market. In the 21st century global society, this goal has achieved considerable harmonization among the various countries in the European Union and Asia.

The harmonization effort of private international law is to seek harmonization of results among different jurisdictions while preserving the differences of domestic laws. Whether in a closely integrated system such as the EU or in a loose system such as the GATT, we have escape clauses to reserve domestic matters. We must not overplay the costs of allowing exceptions if we would be better off by applying the harmonized rules. The law is no longer for the monopoly of a nation or big businesses but for the interest of all the people who use them. From the view point of these global users of law, harmonization of conflict of laws should be a worthwhile goal for a national legislators or lawyers to pursue for the millennium.

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