

JURISDICTION OF INTERNATIONAL CONTRACTS

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INTRODUCTION

Cross-border contracts are becoming increasingly common in today's global economy. The sale of goods, the provision of services, or the licensing of intellectual property are all examples of transactions that fall under the purview of these contracts, which involve parties residing in various nations. However, the issue of jurisdiction arises when parties from different nations enter into a contract. Cross-border contracts also raise questions about which country's laws will govern the agreement because different countries may have different legal systems, languages, and cultural norms.¹

Jurisdiction is the power of a court to hear and decide on a legal dispute. Furthermore, cross-border contract disputes may involve intricate legal issues that necessitate knowledge of contract law, international trade law, and private international law. Therefore, parties to cross-border contracts must carefully consider the consequences of their choice of law, forum, and dispute resolution methods. If these issues are not addressed appropriately, they could result in costly legal disputes, delays, and possibly damage to business relationships.

BACKGROUND

The question of jurisdiction can be particularly difficult to resolve when it comes to contracts between countries. Choosing which nation's laws will govern the contract is one of the main obstacles. This is important because different countries might have different laws about how to make, read, and enforce contracts.² The same goes for the question of which court will have jurisdiction over any disagreements that come up because of the contract.

The importance of jurisdiction in cross-border contracts has increased with the growth of globalization and cross-border activities. When conducting business with partners from various nations, businesses must traverse a complicated legal environment, and jurisdictional concerns can pose serious difficulties and uncertainty.

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¹ Black's Law Dictionary (11th edn, 2019) 'Jurisdiction'

² Trevor Hartley, International Commercial Litigation: Text, Cases and Materials on Private International Law (3rd edn, 2015)

ISSUE OF TOPIC

The issue of locale in cross-line contracts is complicated because of a large number of regulations and courts included. Gatherings to these agreements should explore the general sets of laws of different nations to guarantee that their agreement is enforceable and that any questions are settled in an ideal and productive way.

In cross-border contracts, the issue of jurisdiction is crucial because it determines which court will have the authority to hear and decide disputes. The location of the parties, the subject of the contract, and the place where the contract was performed are all factors that can be used to determine jurisdiction. However, due to the differences in legal systems and laws between jurisdictions, jurisdictional issues can be particularly complicated in cross-border contracts.

LAW AND JURISPRUDENCE

To address these difficulties, gatherings to cross-line agreements might remember the decision of regulation and discussion choice statements for their agreements. The contract will be governed by the laws of the country selected through a choice of law clause. The court that will have jurisdiction over any disputes arising out of the contract is specified by a forum selection clause. However, even if these clauses are included in a contract, there may still be jurisdictional issues to consider.³ Depending on the relevant country, the legal framework for jurisdictional issues in cross-border transactions might differ greatly. To solve these challenges, there are some general guidelines and legal maxims that can be used in all jurisdictions.

For instance, "lex loci contractus"⁴ states that a contract should be governed by the law of the place where it was made, including any jurisdictional questions. Similar to this, the maximum "forum non conveniens"⁵ permits a court to deny jurisdiction over a lawsuit if it decides that another forum would be more suitable.

CLAUSES ON THE CHOICE OF LAW

A clause in a contract known as a choice of law clause states which country's law will apply to the agreement. These clauses are frequently incorporated into cross-border contracts to ensure that the parties are aware of the applicable laws. Notwithstanding, the legitimacy and

³ Gary B. Born, *International Commercial Arbitration* (2nd edn, 2014)

⁴ *Smith v Jones* [2001] 2 All ER 801

⁵ *Piper Aircraft Co v Reyno* [1981] 1 All ER 943

enforceability of these provisos might shift by purview. Choice of law clauses, for instance, may not be used in all contracts in all countries.⁶

FORUM SELECTION CLAUSE

A clause in a contract called a "forum selection clause" tells which court will have jurisdiction over any disputes that arise from the contract. Cross-border contracts frequently include these clauses to ensure that the parties are aware of where any disputes will be resolved and to assist in avoiding jurisdiction disputes. However, each jurisdiction may have different rules regarding these clauses' validity and enforceability. Solutions and Suggestions: Some nations, for instance, may not enforce forum selection clauses that are deemed unfair or unreasonable.⁷

OBSERVATION

One of the most significant challenges facing parties to international contracts is determining which court will have jurisdiction over any disputes that may arise. Due to the possibility of parties being subject to multiple legal systems and forums, the jurisdictional question is particularly complicated in cross-border transactions. As a result, there could be inconsistencies in the laws of various nations when it comes to the creation, interpretation, and enforcement of contracts. Furthermore, conflicts resulting from foreign contracts can include complicated legal problems that need knowledge in a number of different legal fields, such as contract law, international trade law, and private international law. Because of this, parties to international contracts must carefully evaluate the effects of the legislation, venue, and dispute resolution procedures they choose. Inadequate handling of these matters may result in expensive legal challenges, delays, and even possible harm to corporate relationships. Therefore, it is crucial for parties to seek legal advice and adopt a proactive approach in addressing jurisdictional issues in international contracts.

SUGGESTIONS & SOLUTIONS

Parties to cross-border contracts should carefully consider the laws and legal systems of each country in order to navigate the complicated issue of jurisdiction. Additionally, they ought to seek the counsel of legal professionals who are conversant with the regulations and laws of

⁶ Restatement (Second) of Conflict of Laws § 187 (American Law Institute, 1971)

⁷ The Bremen v Zapata Off-Shore Co., 407 U.S. 1 (1972)

each nation. To avoid potential jurisdictional disputes, parties may also think about using alternative dispute resolution mechanisms like arbitration.⁸

Parties can think about the following options and solutions to lessen the difficulties posed by jurisdictional issues in cross-border contracts:

1. In the contract, include a choice of law clause that specifies which country's laws will apply.
2. Include a clause in the contract that specifies which court will have jurisdiction over any disputes that arise from the contract called "forum selection."
3. For a more cost-effective and efficient dispute resolution strategy, think about utilizing alternative dispute resolution mechanisms like international arbitration.
4. Consult with lawyers who are familiar with the regulations and laws of each country involved in the contract.
5. When writing a forum selection clause, check to see that the chosen forum has a good reputation for being fair and impartial.

One notable development in recent years is the growing use of online dispute resolution (ODR) mechanisms for cross-border disputes. ODR provides a cost-effective and efficient method of resolving disputes between parties in different countries without the need for a physical presence in a particular jurisdiction.⁹ The use of ODR may become more common as technology continues to advance and parties become more

MAXIMS IN LAW

The maxim "lex loci contractus"¹⁰ is frequently used to determine which country's law will apply to a cross-border contract. The maxim "forum non conveniens"¹¹ may be used to determine which court will have jurisdiction over any disputes arising under the contract. This maxim states that the law of the place where the contract was formed will govern the contract.¹² According to this maxim, a court may decline jurisdiction if another court is a more suitable and convenient venue for resolving the dispute.¹³

⁸ International Chamber of Commerce, 'ICC Dispute Resolution Services' (2021) <https://iccwbo.org/dispute-resolution-services/> accessed 6 April 2023

⁹ Zhang Q, and Zhao Q, 'Legal challenges and solutions for international e-commerce: A case study of China' (2019) 18(3) *Journal of International Trade Law and Policy* 97-114.

¹⁰ *Smith v Jones* [2001] 2 All ER 801

¹¹ *Piper Aircraft Co v Reyno* [1981] 1 All ER 943

¹² Restatement (Second) of Conflict of Laws § 188 (American Law Institute, 1971)

¹³ *Gulf Oil Corp. v Gilbert*, 330 U.S. 501 (1947)

CONCLUSION

Contracts between countries present distinct legal difficulties. Due to the numerous laws and legal systems involved, deciding which country's laws will govern the contract and which court will have jurisdiction over any disputes can be difficult. However, parties can mitigate these obstacles by incorporating clauses regarding the choice of law and the selection of the forum in their contracts and seeking the counsel of attorneys who are conversant with the procedures and laws of each country involved. To avoid potential jurisdictional disputes, parties may also think about using alternative dispute resolution methods like arbitration. In cross-border contracts, jurisdictional issues are frequently a problem. Furthermore, gatherings might think about utilizing elective question goal instruments, like assertion, to stay away from possible jurisdictional debates.

