

Governing Law in the Absence of Choice in Contractual Relations in the Czech Republic and in the United States (Private international law in a comparative perspective)

English Summary:

The subject of the thesis is the main differences in Private International Law (or Conflict of Laws in the United States) in the area of contractual relations in the absence of a choice of law. The introduction explains the methodology of the work, as it does not strive to provide an exhaustive list of contract types – since this would be ill-advised considering the differences in Czech and American contract law – but rather provide the reader with a general characterization of the different approaches to the subject matter. The introduction also explains the legal certainty principle (typical for Civil Law countries) and the principle of equity (typical for Common Law countries), and describes how the consideration of these will enhance the reader's understanding of the thesis' topics.

The first chapter is concerned with the relevant sources of law in the Czech Republic and in the United States. The most important legislation applicable in the Czech Republic is the Czech Private International Law Act, the Rome Convention and the Rome I Regulation. In relation to US law, the text discusses some of the most important clauses of the American Constitution, State law (including some interesting recent developments) and the two Restatements of Conflict of Laws. A special subchapter is dedicated to the Vienna Convention (1980).

The next chapter proceeds by examining specific choice-of-law rules of section 10 of the Czech Private International Law Act and the “reasonable settlement” principle contained therein. Articles 4 of both the Rome Convention and Rome I regulation are also discussed thoroughly, including the “closest connection” factor and the aspect of “characteristic performance”. As the trend of attaining the highest reasonable level of legal certainty is now clearly discernable on the Old Continent, the author asks whether this ideal can really be reached and whether the new choice-of-law rules actually do guarantee a higher degree of legal certainty.

Chapter no. 3 examines the approaches to determining the governing law in the United States. After a brief examinations of the differences between cases arising from inter-state and international disputes, the discussion moves on to the Traditional approach (i.e. Restatement [First] of Conflict of Laws), since its principles are still being applied in many States to this day. This is followed by the explanation of several Modern approaches including the Better Law Approach, the Significant Contact Approach and mainly the Restatement (Second) of Conflict of Laws. It is important to understand that the choice-of-law rules contained in the second Restatement are not arranged in a hierarchical order and therefore afford the judge significant discretion in applying the principles contained therein with regard to the specifics of a given case. It is therefore evident that equity is the dominant maxim behind American Conflict of Laws, as opposed to legal certainty.

Finally, the conclusion briefly recapitulates the main points of the Thesis. At this place, the author also offers his own view on the dichotomy of legal certainty on the one hand and equity on the other, as well as on possible future developments in the Private International Law of both countries.