

William & Mary Law Review

Volume 7 (1966)
Issue 1

Article 3

January 1966

Party Autonomy in Contracts Specifying Foreign Law

Robert Johnston

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Comparative and Foreign Law Commons](#), and the [Conflict of Laws Commons](#)

Repository Citation

Robert Johnston, *Party Autonomy in Contracts Specifying Foreign Law*, 7 Wm. & Mary L. Rev. 37 (1966), <https://scholarship.law.wm.edu/wmlr/vol7/iss1/3>

Copyright c 1966 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

PARTY AUTONOMY IN CONTRACTS SPECIFYING FOREIGN LAW

ROBERT JOHNSTON*

The energetic and steady flow of United States investment into foreign countries since the start of the Second World War is a commonplace of modern economic history; however, the opportunities provided for private investment on a large or small scale by the Common Market, the European Free Trade Area, the General Agreement on Tariffs and Trade, and the Alliance for Progress have focused new attention on the many problems involved.¹

Because international investment activity, whether as modest as a single transaction for the carriage of goods to Europe and their consignment there for sale, or as large as the purchase of an entire European manufacturing complex, involves contracts that necessarily bring into play conflicts of law principles, the determination of the law that governs all such contracts is one of the important problems this area of economic activity generates.

A classical principle of the conflicts of law is that the law of the place where a contract is made governs.² Elaboration of this rule requires that the law of the place of making governs those aspects of the contract which concern the making, and the law of the place of performance governs those aspects which concern the performance. Another doctrine permits the parties to a contract to decide at the time of the making what law they wish to have govern the contract. An early English expression of this doctrine appears in *Robinson v. Bland*,³ where the problem was whether or not a gambling debt won in France, where gambling debts were not void, was recoverable in England, where they were void. Lord Mansfield, speaking about the conflicts of law question said: "The general rule established *ex comitate et jure gentium* is, that the place where the contract is made, and not where the action is brought, is to be considered in expounding and enforcing the contract. But this rule admits of an exception where the parties (at the time of making the contract) had a view to a different kingdom."⁴

* Harvard College B.A. (1960); Marshall Wythe School of Law B.C.L. (1965).

1. Surrey, *American Investments Abroad*, 7 PRAC. LAW. 13 (1961), 8 PRAC. LAW. 45 (1962).

2. *Stumpf v. Hallahan*, 91 N.Y.S. 1062 (1905).

3. 1 W. Bl. 234, 96 E.R. 129 (1760).

4. *Id.* at 259, 96 E.R. at 141.

An early American counterpart is the language from the Supreme Court case of *Wayman v. Southard*,⁵ holding: "In every forum a contract is governed by the law with a view to which it was made."⁶ This doctrine is called party autonomy and is the subject of inquiry here.

THE APPLICATION OF PARTY AUTONOMY

While the doctrine seems settled and decisive in theory, it is not at all so clear in application. An important commentator in the field found in 1935 that American courts were continuing to accept the doctrine,⁷ but another, writing recently in *Practical Lawyer*, notes: ". . . there is still strong and purportedly growing opposition to allowing parties the choice of law governing their contracts."⁸ Morris J. Levin, writing in the *Georgetown Law Journal*,⁹ proposes this party autonomy doctrine for contracts:

Where the parties to a commercial contract have made an express stipulation that the law of a particular state or nation should govern the contract, and the law so stipulated has a substantial connection with the transaction and its enforcement would not be contrary to the public policy of the forum, then the forum should use the internal (domestic) law of the particular state or nation stipulated as governing all questions arising under the contract.¹⁰

The thrust of this proposal ensures use of the internal law of the referred jurisdiction¹¹ and arises from the author's criticism of the *Vita Food*¹³ case and the *Duskin*¹⁴ case for their reference to the whole law of the stipulated jurisdictions in a manner that might permit anomalous results through the doctrine of renvoi. The difficulty, however, is that, while permitting an exception to the doctrine where there are infringements of the forum's public policy, it invites perpetuation of the courts' present sporadic application of the doctrine at all.¹⁵ Nonetheless,

5. 10 Wheat. (23 U.S.) 1 (1825).

6. *Id.* at 48.

7. 2 BEALE, *CONFLICTS OF LAWS* 1172-73 (1935).

8. Schliesser, *International Sales Agreements*, 10 PRAC. LAW. 45 (1964).

9. Levin, *Party Autonomy: Choice of Law Clauses in Commercial Contracts*, 46 GEO. L. JOUR. 260, 261 (1957-58).

10. *Ibid.*

11. *Id.* at 262.

13. *Vita Food Products v. Unus Shipping Co.*, [1939] A.C. 277.

14. *Duskin v. Pennsylvania-Central Airlines Corp.*, 167 F. 2d 727 (6th Cir. 1948).

15. *Conflicts of Laws: Party Autonomy in Contracts*, 57 COLUM. L. REV. 553, 566

Levin feels in cases where the parties have stipulated the governing law, the lower federal courts, at least, have applied the doctrine in areas in which Supreme Court opinion was as yet unexpressed.¹⁶ On the other hand, another commentator writing at the same time found, with respect to contracts of passage, "While it is usually clear that parties may stipulate the use of the law of a foreign country, it is sometimes not clear to what extent such a provision should govern subsequent dealings between the parties relating to the contract."¹⁷

It appears, then, that in American jurisprudence in general, the doctrine of party autonomy faces a variety of attitudes. In this particular discussion, however, interest focuses on the attitudes of United States courts which are peculiar to contracts stipulating the laws of foreign nations or foreign contracts stipulating United States law. The recent cases arising from such contracts appear to obfuscate the bravely and simply stated echoes of the doctrine. One example is *Duval v. Skouras*,¹⁸ where after reciting the principles of *lex loci contractus* and *lex loci solutionis*, the court went on: "These general rules, however, yield to the primary canon of construction, which requires that, where it can be ascertained, the intention of the parties shall govern."¹⁹ Another earlier example appears in *Smith v. Compania Litografica de la Habana*,²⁰ where the court noted the New York conflict of laws rule:

The general rule is that the *lex loci contractus* prima facie determines the validity, obligation and legal affect of a contract. This rule yields to an express or implied contrary intention of the parties that some other law is to control. When a contract is to be performed in a place other than the one in which it was entered into, it is presumed that the parties intended that the *lex loci solutionis* is to control. When the place of performance is in different states or countries, the presumption as to the intention of the parties to have the *lex loci solutionis* control does not obtain, and the general rule applies, in the absence of an express agreement to the contrary.²¹

(1957): "Invocation of the public policy of the forum is a frequent deterrent to party autonomy in all these areas."

16. *Supra* note 7, at 276.

17. *Determining the Scope of Choice of Law Provisions in Steamship Tickets: Adhesion Contracts and the Conflict of Laws*, 65 YALE L. JOUR. 553 (1956).

18. 181 Misc. 651, 44 N.Y.S. 2d 107 (1st Dept. 1943).

19. *Id.* at 111.

20. 127 Misc. 508, 217 N.Y.S. 39 (1926).

21. *Id.* at 42.

The courts, both state and federal in New York, have been squeamish about agreeing to party autonomy in contracts calling for the use of foreign nations' laws.

THE ATTITUDES OF THE COURTS

In their language and reasoning, the decisions betray judicial sentiments ranging from indifference to hostility to nationalism and suggest the conclusion that persons making contracts, exposing themselves to already unpredictable applications of conflicts of laws notions, will be more fairly served than they are now by the restriction of party autonomy to evidence aiding application of what is called the center of gravity theory.²²

The cases revealing these attitudes fall into these categories:

- 1) Cases permitting the stipulated law to govern,
- 2) Cases in which the court makes assumptions about the parties' intent toward the governing law,
- 3) Cases demanding a substantial connection to the stipulated law or demanding no conflict with public policy,
- 4) Cases in which the court refuses to be bound by the stipulated law,
- 5) Cases in which courts avoid having to use the stipulated law.

PERMITTING THE STIPULATED LAW TO GOVERN

Illustrative of cases permitting a stipulated foreign law to govern a contract is a nineteenth-century federal case in which a shipment of cattle was lost en route to England under a contract of carriage made in Baltimore.²³ It is remarkable about the case that the critical difference in the applicable law was that by English law a carrier could contract away his common law duties of care, whereas in the United States the interests of public policy prohibited a carrier from so attempting to do.

Nevertheless, because the contract of shipment specified that all questions arising under the contract were to be determined by English law, the District Court permitted the contractual limitation of liability to exculpate the defendant without considering any public policy involved.²⁴

22. Morris, *Reply to Proper Law of the Contract*, 3 INT. LAW Q. 197 (1957).

23. The Oranmore, 24 F. 922 (D. Md. 1885).

24. Cf. the domestic case of Ringling Bros.-Barnum and Bailey Combined Shows v. Olvera, et al., 119 F. 2d 584 (9th Cir. 1941), where the court permitted the stipulated

More recently, the Supreme Court case of *Lauritzen v. Larsen*²⁵ acknowledged the existence of public policy as a responsibility of the forum while permitting a stipulated foreign law to govern the plaintiff's rights under a labor contract. Although the thrust of this case was the scope of the Jones Act and the decision to use general maritime law in determining the choice of law, the court mentioned with respect to the choice of law specified by the contract:

We face the fact that this contract was explicit that the Danish law and the contract with the Danish Union were to apply. Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. . . . We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship.²⁶

If there is a public policy for reserving United States law to apply to strong United States interests, it may explain the breadth of the holding in *Overseas Trading Co., SA v. U. S.*²⁷ This was an action in quasi-contract brought for recovery of an overpayment caused by mistake of fact in a contract made in Belgium for the sale of surplus U. S. Government property. The contract specified, "This contract shall be governed by and construed in accordance with the law now prevailing in the District of Columbia, United States of America."²⁸

state law to restrict liability in the case to wilful or gross negligence. "It was competent for the parties, even if the law of the forum was different, to agree upon and fix the law controlling all the liabilities and obligations of the parties with regard to performance as that of the state of the contract's execution, and not have it constantly shifting as the circus wandered from one jurisdiction to another."

25. 345 U.S. 571 (1953).

26. *Id.*, pp. 588-589. Cf. also language in the domestic labor contract case of *McKane v. New Amsterdam Casualty Co.*, 196 La. 326, 199 So. 175 (1940) holding, at 182: "We think, however, that, with relation to the applicability of the workmen's compensation law, the better rule is, that the intention of the parties to the contract should be the determining factor. . . ."

27. 159 F. Supp. 382 (Ct. Cl. 1958).

28. *Id.* at 384.

Plaintiff was an assignee of the purchaser, who had since assigned all his rights under the contract to a third party, OMA Trading Corp. Plaintiff argued that because of the place of contracting, Belgian law applied. This law permitted quasi-contractual recovery in such circumstances. Further, the autonomy clause in the contract did not specifically cover the effect of an assignment. The Court of Claims disagreed:

But we are unwilling to acknowledge further that District of Columbia law is applicable only when *construing* the contract. . . . The phrase 'governed by' is extremely broad in scope and not unreasonably includes the nature of the action for recovery, whether the action be on the contract or in the form of quasi-contract.²⁹

The court reasoned that multitudes of possible legal problems often encouraged autonomy clauses couched in general terms. But that the parties used general language in taking a view to the law of a particular jurisdiction just as easily supports a different result. There are cases in another area of this discussion that not only refuse to follow an autonomy clause for being too generally stated but also distinguish most carefully between an autonomy clause for the purpose of interpretation and an autonomy clause for the purpose of validation.³⁰

*Born v. Norwegian America Line Inc.*³¹ appears to be the most recent example of the smooth application of stipulated foreign law in a contract without discussion of the rightness of its use. The plaintiff sued to recover for injuries sustained aboard defendant's vessel while on a voyage from New York to Denmark. Plaintiff purchased the ticket in New Jersey and on receipt signed the contract of carriage that it represented. The contract provided: "all questions arising on this contract ticket shall be decided according to Norwegian law, with reference to which this contract is made."³²

At issue here was whether or not defendant's motion for summary judgment should be sustained, made on the ground that the plaintiff had not brought the action within the one year period of limitations as provided in the contract. It appeared that the parties agreed Norwegian law applied to the validity of this one-year period of limitations.

29. *Ibid.*

30. *E. Gerli & Co., Inc. v. Cunard Steamship Co.*, 48 F. 2d 115 (2d Cir. 1931); *Siegelman v. Cunard White Star Line*, 221 F. 2d 189 (2d Cir. 1955), *infra*.

31. 173 F. Supp. 33 (S.D.N.Y. 1959).

32. *Id.* at 34.

Plaintiff in reply to the motion for judgment said defendant had waived the limitation and had failed to direct his attention to it. Therefore, the Norwegian law on this point was the matter of fact in issue that entitled plaintiff to a trial. But on the basis of depositions at the pre-trial hearing and applying Norwegian law,³³ the court decided that defendant had not waived the limitation and that plaintiff had constructive notice of it by its mere appearance on the ticket. Yet a different result might have obtained if the plaintiff had argued that Norwegian law did not apply at all.

While the cases in this group illustrate courts' conceding to parties to a contract the power to stipulate the law of foreign nations as governing, it is interesting to speculate that the concessions may have been affected either by national policy or by incidental and unremarked connections between the contract and the stipulated law. *The Oranmore*,³⁴ in abandoning the public policy of the forum, and *Overseas Trading*,³⁵ in that jurisdiction of the stipulated law was unconnected with both the place of making and the place of performance, appear to come closest to fulfilling the theory of full party autonomy stated in *Robinson v. Bland*.³⁶

THE INTENT OF THE PARTIES

Several cases demonstrate courts seeking to achieve a desired result by indulging in presumptions as to the parties' intentions concerning the governing law.

In *Commissioner of Internal Revenue v. Hyde*,³⁷ defendant Hyde and his wife made a separation agreement in France, specifying Paris as the forum and specifying desertion as the ground that the wife would sue for divorce, and further providing for a trust in lieu of alimony and dower. The agreement provided that the law of New York should govern the interpretation of the contract.

To escape the doctrine that income from a trust to discharge a husband's marital obligations is taxable to the husband,³⁸ defendant asserted that the contract to make a divorce was illegal; the wife had

33. The court cited *Ferran v. Skips A/S Pacific*, [1957] *Nordiske Domme i Sjøfartsanliggender* 248.

34. *Supra* note 23.

35. *Supra* note 27.

36. *Supra* note 3.

37. 82 F. 2d 174 (2d Cir. 1936).

38. *Douglas v. Willcuts*, 196 U.S. 1 (1935).

released him of his marital obligations in the divorce she had later obtained, and as a result the trust was a voluntary gift.

In order to establish this the defendant referred to the Domestic Relations Law of New York. The court ruled it could not accept the taxpayer's assumption that the validity of the contract must be determined by the law of New York: "The recitation that it was to be 'construed and interpreted' by the law of New York cannot be taken as an expression of intention that its validity was to be governed by that law; nor would such intention, if expressed, be controlling."³⁹ The record failed to show that defendant had proved his contention according to French law.

*Kleve et al. v. Basler Lebensversicherungsgesellschaft in Basel*⁴⁰ shows, by a ruling on a venue clause, a more positive assumption about the parties' view to a foreign jurisdiction. The case involved an action quasi-in-rem begun by attachment of property of the defendant Swiss insurance company located in New York, for unlawful detainer of the cash surrender value of plaintiff's policies after demand for payment had been duly made.

The principal defense was the act-of-state doctrine. Since the contract was made in Germany with German citizens, German law applied. A German law of 1935 required the cash surrender value of life insurance policies held by insured Jews be surrendered to the government in full discharge of the insurance companies' obligations.

The plaintiffs argued that since the insurance contract permitted them to have payment sent to them at their expense, they had an option as to the place of performance. Therefore, Swiss law governed, since Switzerland was the place where the plaintiffs by radiogram actually demanded payment. The court ruled, however, it could not be the intent of the contract that the place of performance be the place where the plaintiff wanted the money directed. At least, the law of Switzerland was inapplicable.

Beginning with the doctrine that the intention and agreement of the parties as to the governing law be controlling, the court said:

The policies were written in Germany on the lives of German nationals and were payable in Germany. . . . Finally, the policies provide that the proper venue for litigation resulting from the insurance contract will be the German courts. . . . Our courts will not recognize

39. *Supra* note 37, at 176.

40. 45 N.Y.S. 2d 882 (1943).

a venue clause which ousts our courts of jurisdiction. But that does not mean that such a venue clause should not be heeded as an indication of the parties' intention as to governing law. . . . There is no question but that the parties intended German law to govern and that, perforce, German law did govern.⁴¹

The court further said the offensive character of the German statute in question did not make it any the less controlling, the case not being one of enforcing the German law in the United States but of recognizing the force of German law in Germany.⁴²

In *In Re Rosenbergers' Estates*,⁴³ a mother and son in Holland in 1940, fearing capture and deportation by the Nazi government, cabled money to New York to respondent bank with instructions to open a joint account. The bank placed in the process of communication an acceptance of these deposits. The mother predeceased her son. The administrator of the mother's estate argued that the concept of a joint tenancy being unknown to the Dutch law, such a transaction being wholly void as an attempted testamentary disposition under that law, the transaction was ineffective to change ownership of the funds from a tenancy in common, even if the parties had intended a joint tenancy. The court answered:

The law which determines the validity of a contract . . . is the law which the parties intended to apply, provided the transaction has some reasonable connection with the place where such law operates. The parties voluntarily transferred the money to a bank in New York and chose a form of account recognized by the law of this State. All parties intended the law of New York to govern the transaction.⁴⁴

Decided in the same year, *Auten v. Auten*⁴⁵ demonstrates the court making assumptions about the parties' view to the governing law in aid

41. *Id.* at 885, 886.

42. See *Dougherty v. Equitable Life Assurance Society of the United States*, 266 N.Y. 71, 193 N.E. 897 (1934): "It cannot be against the public policy of this state to hold nationals to the contracts which they have made in their own country to be performed there according to the laws of that country," and *De Beeche, et al. v. The South American Stores*, [1935] A.C. 148: ". . . It cannot be controverted that the law of this country will not compel the fulfillment of an obligation whose performance involves the doing in a foreign country of something which the supervenient law of that country has rendered it illegal to do."

43. 131 N.Y.S. 2d 59 (1st Dep't. 1954).

44. *Id.*, p. 66.

45. 308 N.Y. 155, 124 N.E. 2d 99 (1954).

of applying the center of gravity theory.⁴⁶ Here a wife sued her husband in New York for arrears in payments under a separation agreement made in New York in 1933. Both parties were English, and the agreement contemplated the wife's return to England. The wife had filed a petition for separation in an English court in 1934; and while the action never went to trial in England, the result was an interlocutory order for the payment of alimony. The question at bar, then, was whether or not the English action constituted a repudiation by the wife of the 1933 separation agreement. The answer would be no if English law governed the agreement. Adding to the number of connections the contract had with the law of England, the court assumed this about the parties' view:

Nor could the parties have expected or believed that any law other than England's would govern the effect of the wife's institution of a separate action. It is most unlikely that the wife could have intended to subject her rights under English law to the law of a jurisdiction several thousands miles distant, with which she had not the slightest familiarity.⁴⁷

The contract of passage case of *Fricke v. Isbrandtsen Co., Inc.*⁴⁸ contains language appearing to acknowledge the value of a foreign nation's judicial policy in assuming a party's view toward that nation's law as governing his contract. The plaintiff was German and purchased in Germany a return ticket of passage to the United States. The contract, however, was written in English, which plaintiff did not know, and stipulated United States law was to govern all questions arising under it. Among its provisions was a one-year limitation on bringing personal injury actions against the company.

Plaintiff failed to bring her action within the contractually limited period, so United States law, if applied, would bar her action. But the court found the circumstances demanded the application of German law. The court noted the practice of the Federal courts was to employ the center of gravity theory assuming parties contracted with a view to the law having the most significant contacts with the contract, and while an express stipulation of a law would not confine judicial

46. This is the doctrine that locates the proper law of the contract by finding which jurisdiction is favored by the weight of incidental connections with the contract. The court here cited *Barber Co. v. Hughes*, 63 N.E. 2d 417 (Ind. 1945).

47. *Supra* note 33, p. 103.

48. 151 F. Supp. 465 (S.D.N.Y. 1957).

inquiry to the stipulation, it would be a weighty element in finding the proper law. The court distinguished the related *Siegelman* case⁴⁹ on the ground the contractual incidents were in the United States. Then, regarding the plaintiff's view to the governing law, the court said:

In the instant case, however, all of the incidents surrounding the sale of the ticket took place in Germany. Plaintiff, if she considered any law, probably felt that German law controlled. It may be that German law affords protection to parties in this plaintiff's position by not attaching great significance to 'objective expectations' as expressed in steamship tickets, and perhaps such protection might even amount to a strong national policy. It would seem that federal conflicts law should take cognizance of such an attitude by the foreign sovereign where it is coincident with so many of the significant contacts. While parties should not be precluded from seeking predictability and uniformity by stipulating their choice of law, unilaterally imposed provisions of this nature should not be enforced unless the party urging enforcement provided the other illiterate in the language of the contract, with knowledge of what was intended. If, for example, plaintiff had been given a German counterpart of the contract and had understood its terms, the stipulation of United States law would probably be binding upon her. As in the *Siegelman* case, she could be charged, as a matter of federal conflicts law, with autonomy to choose to be bound by a particular legal system. But unless a party, in circumstances such as those found in the instant case, can be said to have understood that another law from the one normally governing the contract is to control, it would be improper to decide a question which poses a choice between legal systems having quite different jurisprudential philosophies on American contract law principles.⁵⁰

Since the contract was being performed under the flag of the stipulated jurisdiction, it is hard to decide if the court's assumptions about the plaintiff's expectations were critical in tipping the balance of contractual connections in favor of German law. At least, the court's consideration of the plaintiff's possible state of mind and German public policy, appear to play a substantial part in its refusal to follow the stipulation of law clause.

In other recent cases in this category, courts have made assumptions about the contract law of Mexico in dealing with a party's defenses

49. *Siegelman v. Cunard White Star Line, Ltd.*, 221 F.2d 189 (2d Cir. 1955).

50. *Supra* note 48 at 468.

to a suit under a contract made there.⁵¹ They have assumed from circumstances surrounding negotiation for a contract of employment with a Pittsburgh hotel that the parties intended the application of Venezuelan labor law.⁵² In 1960, the court decided in the case of a contract made in Kuwait between a Lebanese and a Delaware corporation, where neither party offered proof of Kuwait law, that the parties' own attitude that the law of the forum applied amounted to a stipulation that New York law applied. This was true although New York was unconnected with the place of making, or performance, or the domicile of the parties.⁵³ In a 1964 case,⁵⁴ the Supreme Court of Louisiana in an action by a Cuban refugee to recover the cash surrender value of a fully paid up policy, purchased in Cuba through an agent of the company, but accepted in Louisiana, respecting which all premium payments had been made in U.S. dollars in Louisiana, decided plaintiff's receiving and paying loans on the policy in Cuba in pesos showed no intention to modify the contract and failed to permit any assumption that Cuban law, with its confiscatory legislation, applied so as to defeat recovery.

What these cases contribute is the disposition of some courts, given appealing fact situations, to consider an express stipulation of the law to govern a contract as no more important than the assumptions they themselves might make of the parties' states of mind, that is, the disposition of some courts not to take party autonomy seriously.

A SUBSTANTIAL CONNECTION TO THE STIPULATED LAW

The consistent qualification of party autonomy, however, is the judicial demand that the circumstances of the contract have a substantial connection with the stipulated law. Levin⁵⁵ notes that courts like to find connections between the contract and the law stipulated, and are very reluctant to use the stipulated law when to do so would be

51. *Refrigeradora del Noroeste, SA v. Applebaum*, d/b/a Penguin Frozen Foods, 138 F. Supp. 354 (N.D. Ill. 1956).

52. *Klekamp v. Blaw-Knox Co.*, 179 F. Supp. 328 (S.D. Cal. 1959). There were substantial connections between the United States and the contract, but this court ignored the opportunity that others might have taken to consider the difference if any between the public policy behind employment contracts made in California and Venezuela.

53. *El Hoss Engineering and Transport Company, Ltd., and American Independent Oil Company*, 183 F. Supp. 394 (S.D.N.Y. 1960).

54. *Theye y Ajuria v. Pan American Life Insurance Co.*, 245 La. 755, 161 So. 2d 70 (1964).

55. *Supra* note 9.

against the public policy of the forum. "Therefore, it can be said that the courts, by never following the parties' intention where there was *not* such a real relation, have incorporated this limitation into any rule of the intention theory."⁵⁶ The generally acceptable connections are:

the place of making,
the place of performance,
the place of domicile of the parties,
the place with integral connections with the contract,
sets of rules well known to professional or business groups,
the situs of the security.

Another writer notes:

To the extent that such choice [of law by the parties] is recognized at all, it is almost uniformly qualified by a requirement of substantial contractual connection with the stipulated law. . . . Invocation of the public policy of the forum is a frequent deterrent to party autonomy in all these areas.⁵⁷

A turn-of-century Supreme Court case sets the tone of the judicial attitude. In *London Assurance v. Companhia de Moagens do Barreiro*⁵⁸ the shipping insurance contract stipulated claims under the policy were to be adjusted according to the usages of Lloyd's. Permitting the stipulation to guide adjudication of the case the court noted:

. . . We think the interpretation of the contract was intended by the parties to depend upon the principles of English law as they obtained and were recognized in England by the usages prevailing at Lloyd's. This is what the parties expressly stipulated for, and it is no injustice to the company to decide its rights according to the principles of the law of the country which it has agreed to be bound by, so long as, in a case like this, the foreign law is not in any way contrary to the policy of our own.⁵⁹

56. *Id.* at 266.

57. Note, *Conflict of Laws: "Party Autonomy" in Contracts*, 57 COLUM. L. REV. 553, 566 (1957).

58. 167 U.S. 149 (1897).

59. *Id.* at 169.

See *Barndt v. Det Bergenske Dampskibsselskab*, 28 F. Supp. 815 (S.D.N.Y. 1938), in which a contrary public policy defeats the stipulated law employed to limit the shipper's liability; also *Oceanic Steam Navigation Co. v. Corcoran*, 9 F. 2d 724 (2d Cir. 1925).

The substantial connection requirement is implicit in the court's approach to discovering the proper law of an antenuptial agreement which was the subject of *Strebler v. Wolf et al.*⁶⁰ The plaintiff, a French national, sought in New York the property located in New York of his deceased wife who had moved there after living with the plaintiff for two years. The ground of the claim was an antenuptial agreement between the plaintiff and decedent made in France and specifically referring to French law, by which the agreement was to be governed. This agreement provided for a universal community of property such that at the death of one party the assets and liabilities of both were to belong to the survivor alone. The defendants in the case however claimed they were to take according to the terms of decedent's will, because under the law of New York, which they claimed governed, such contracts were apparently not valid.

The court carefully examined the applicable laws of France⁶¹ and decided such an agreement as this was valid and effective in France to create a right in the nature of a joint tenancy in the entire community property of the marriage. But it would not be enough for defendants to prevail to show a view to the law of New York. After reciting the doctrine of *lex loci contractus* the court said:

... however it is the intention of the parties that governs and by express or implied agreement they may select another jurisdiction. Two things are then requisite—the property is situated here and the parties intended that it should be administered here in accordance with the laws of this state.⁶²

Since it appeared from the evidence there was a French contract and a view to French law, and all the property contested in the suit was a part of the community of property created by the contract, there were no connections with New York law sufficient to cause its application, although the wife's estate was physically located in New York.⁶³

The vulnerability to public policy of contracting parties' view to the

60. 152 Misc. 859, 272 N.Y.S. 653 (1st Dept. 1934).

61. *Id.*, p. 658. See sections 1526, 1497, and 1837, French Civil Code, permitting a community of present and future property in a marriage, and sections 1399, 217, 1421, and 1426, cited by the court.

62. *Id.*, p. 657, citing *Hutchison v. Ross*, 262 N.Y. 381, 395, 187 N.E. 65, 71.

63. *Id.*, p. 658. Cf. also cautionary dicta in *Travellers' Insurance Co. v. American Fidelity and Casualty Co.*, 164 F. Supp. 393 (D. Minn. 1958). "However, the power of the parties to choose the governing law is not without limits. That chosen must be the law of a place which has a substantial connection with the contract, and in exercising that choice, the parties must act in good faith and without intent to evade the law;"

law of a particular jurisdiction, however found, appears again in *Compania de Inversiones Internacionales v. Industri Hypotekshanken i Finland A/B*.⁶⁴ Here, plaintiff Argentinian corporation had purchased bonds of defendant Finnish bank. The contract of sale had been made in New York, with payment promised in gold coin of the United States of the standard of weight and fineness as it existed on July 1, 1924. The bonds were payable at the office of the New York underwriter Lee, Higginson & Co. Prior to the suit a joint resolution of Congress⁶⁵ provided "gold clauses" were against public policy and payments in contracts must be made in whatever currency was at the time legal tender for public and private debts. Plaintiff corporation sued to recover the difference between the value of the gold coins and the value of the proffered notes.

It is well settled parties contract subject to the will of the sovereign. If the parties here had contracted with a view to United States law, then failure to pay in gold coins would not be a breach of the contract.

This was what the court found, as it said:

The contract was made in New York, and the bonds are payable and the entire performance of the contract is to take place in the United States. If no other intention is revealed, it must be taken that it was intended by the parties that United States law should be applicable to this contract. The intention of the parties, express or implied, generally determines the law that governs a contract. . . . The parties to a contract may not by their intention, however expressed, override the laws of the country in which suit is brought when a matter of the public policy of that country is involved. Even comity with the laws of another jurisdiction never extends to the enforcement of a law of that jurisdiction which violates a positive law of the country wherein suit is brought and is contrary to its public policy.⁶⁶

William Whitman Co. v. Universal Oil Products Co., 125 F. Supp. 137, 147 (D. Del. 1954), ". . . The jurisdiction whose law is adopted by the express intent of the parties must be one which has a real connection with one or more of the various elements of the contract and parties may not arbitrarily select the law of some jurisdiction which has no relation to the matter in controversy;" and *Owens, et al. v. Hagenback-Wallace Shows Co.*, 58 R.I. 162, 192 A. 158 (1937), denying effect to a stipulation of Florida law where the court found nothing in the record properly connecting the contract to Florida law. This last case is directly *contra* on its facts to *Ringling Bros.-Barnum and Bailey Combined Shows, Inc. v. Olvera, et al.*, *supra*, note 17.

64. 269 N.Y. 22, 198 N.E. 617 (1935).

65. 31 U.S.C.A. 463.

66. *Supra* note 51, pp. 618, 621; *Palmer v. Chamberlain*, 191 F. 2d 532 (5th Cir. 1951); *Connecticut General Life Insurance Co. v. Boseman*, 84 F. 2d 701, 705 (5th Cir. 1936).

A 1955 case in the field of shipping, *Siegelman v. Cunard White Star Line Ltd.*,⁶⁷ contributes a comprehensive and conscientiously reasoned handling of the limits contractual connections and public policy draw in their uncertain contours around the freedom of parties to stipulate that a foreign law is to govern their contract.

The case involved a contract of passage made in New York reciting all questions arising thereunder should be decided according to English law. An initial question was whether in determining the law to apply to the effect of the contract the court should be guided by New York or federal conflicts of laws rules. Because this was a maritime case, *Erie R.R. v. Tompkins*⁶⁸ does not require the application of other than federal maritime law.

The language in which the court couched its handling of the specification of English law so as to permit being guided thereby, merits quoting *in extenso*.

. . . The provision that English law should govern must be taken to represent the intention of both parties. Therefore, this provision, if effective under the federal choice of law rule, renders English law applicable here, even though, absent the provision, some other law would govern under the applicable federal conflicts rule.

Liverpool also indicates that there may be an exception to this rule where a contract stipulates another law, but the scope of this exception is not clear. Thus, since we cannot assume that the parties' choice of law will always foreclose the court from applying another law, our question is whether the contract provision here should have the effect, under federal conflicts rules, of making the English law applicable to the particular question posed by this case. . . .

As we have said, we construe the contract as establishing the intention of the parties that English law should govern both the interpretation and validity of its terms. And we think it clear that the federal conflicts rule will give effect to the parties' intention that English law is to be applied to the *interpretation*⁶⁹ of the contract. Stipulating the governing law for this purpose is much like stipulating that words of the contract have the meanings given in a particular dictionary. . . . On the other hand, there is much doubt that parties can stipulate the law which should govern the validity of their con-

67. *Supra* note 49.

68. 304 U.S. 64 (1938).

69. The court here referred to the general statement of the rule *lex loci contractus* as set forth in *Liverpool and Great Western Steam Navigation Co. v. Phoenix Insurance Co.*, 129 U.S. 397 (1889).

tract. To permit parties to stipulate the law which should govern the validity of their agreement would afford them an artificial device for avoiding the policies of the state which would otherwise regulate the permissibility of their agreement.

Where the law of the parties' intention has been permitted to govern the validity of contracts, it has often been said 1) that the choice of law must be *bona fide*, and 2) that the law chosen must be that of a jurisdiction having some relation to the agreement, generally either place of making or the place of performance.

. . . But we express no opinion on what result would follow if we had stronger policies at stake, or if the parties had attempted a feigned rather than a genuine solution of the conflicts problem.⁷⁰

Language in these cases upholding the primacy of forum public policy and of contractual connections with the stipulated law frequently appear, as though in response to a precautionary reflex. They appear as part of a general statement of the law, and reveal in courts' attitudes toward party autonomy a general *malaise*.

COURTS REFUSING TO BE BOUND BY STIPULATED LAW

Closely related to the cases demanding a substantial contractual connection with the stipulated law are the cases in which the courts refuse to recognize any binding force in the stipulation of foreign law, but consider the stipulation as evidence helping them to locate the center of gravity of the contract.

Judge Hand made *E. Gerli & Co., Inc. v. Cunard Steamship Co.*⁷¹ represent a very strong example of this hostility, seldom since followed with comparable vigor. Ruling that a specific reference to a substantive point of English law in the clause in issue overrode a general stipulation of Italian law as governing the whole contract, he said:

People cannot by agreement substitute the law of another place; they may of course incorporate any provision they wish into their agreements—a statute like anything else—and when they do, courts will try to make sense out of the whole, so far as they can. But an agreement is not a contract, except as the law says it shall be. . . . Some law must impose the obligation, and the parties have nothing whatever to do with that. . . .⁷²

70. *Supra* note 49, at 196. See also *Greenwald v. Cunard Steamship Co., Ltd.*, 160 F. Supp. 250 (S.D.N.Y. 1958).

71. 48 F. 2d 115 (2d Cir. 1931).

72. *Id.* at 117. See also *A. S. Rampell, Inc. v. Hyster Company*, 3 N.Y.2d 369, 144

*Chinchilla v. Foreign Tankship Corporation*⁷³ contains language equally indifferent to the idea of party autonomy. The suit was brought by a ship radio operator for breach of a contract of employment following refusal to rehire him upon his return from a medical leave of absence. The contract had been signed in a Spanish port, the ship was of Panamanian registry, and the contract conditions of employment clause stated Panama law was to apply to all cases of illness and injury incurred while in the service of the vessel. The parties to the suit seemed to agree that Panama law should govern.⁷⁴

The court, however, applied New York law to the contract:

And while the parties to a transaction do not have complete autonomy in the choice of law that governs that transaction, circumstances may indicate that for some purposes they refer to the law of a sovereign other than the one which would normally govern as controlling in a limited way their respective rights and duties, and those indications will be respected. . . . There is nothing to suggest that any act of the parties had its 'locus' in Panama, except the flag of the vessel The 'Conditions of Employment' . . . provide 'that Panama law shall apply in all cases of illness or injury incurred while in the service of the vessel.' In view of these facts it is fair to assume that except as otherwise provided in the articles and the accompanying document, the application of Panama law was to be limited to a claim based upon injury or illness. That is not the claim here⁷⁵

Moving from this to finding the center of gravity of the contract lay elsewhere than the place of the stipulated law, although the parties in court continued to agree about its applicability, would be a familiar step to take; but the court went further:

Why then should our own 'internal' law not apply? Basically it is our law that governs from the mere fact that the litigation is before us; it is a truism that a case before the courts of New York is to be decided by New York law. History and policy may suggest an inquiry for certain purposes into the law of another jurisdiction in order

N.E.2d 371 (1957), in which the court ignored a stipulation of Oregon law and decided the case on the basis of the law of the forum, without accounting for any assumption of view to New York law or any public policy.

73. 195 Misc. 895, 91 N.Y.S. 2d 213 (1949).

74. *Id.* at 214.

75. *Id.* at 217, citing *Dreyfus v. Patterson Steamships Ltd.*, 43 F. 2d 824 (2d Cir. 1930), and *E. Gerli & Co., Inc. v. Cunard Steamship Co.*, *supra* note 59.

to determine that litigation, but unless they do, we decide a case by reference to our own corpus juris unenriched by incorporation of foreign law. Our policy . . . is to look to the 'law of the flag.' But the parties here have indicated that they wish to have the consequences of certain of their acts removed from the power of Panama to determine, that wish will be respected, and the alternative law is that of the forum wherein they find themselves.⁷⁶

A more recent series of shipping cases demonstrates a milder and perhaps more generous application of the doctrine relevant to this part of the discussion, holding the stipulation of governing law in a contract as only one piece of evidence a court may consider in determining the proper law to be applied.

The complexity of *Mulvihill v. Furness, Withy & Co., Ltd.*⁷⁷ arises from the nature of the action, an appeal from a motion for summary judgment, and from the fact the stipulation of foreign law contained a modification acknowledging a United States statute.

In this case the court carefully examined a clause stipulating the application of English law and decided against following it, encouraged to do so by the fact the clause limiting the time for the bringing of actions specifically conformed the limited time to the requirements of 46 U.S.C.A. 183b.⁷⁸ The contract of passage for transportation from New York to Bermuda and return was made in New York. The contract further provided: "all questions arising on this ticket shall be decided according to English law with reference to which this contract is made."⁷⁹ The defendant pleaded failure to bring the action timely, and the immediate issue was the validity of the contractual limitation under the applicable law. But the specific acknowledgment of a United States statute was central in shifting the balance of contractual incidents in favor of federal maritime law:

Indeed, the very motion [for summary judgment] before us, involving a substantive determination of the merits of the plaintiff's claim, calls

76. *Supra* note 73, at 218; cf. also *Haag v. Barnes*, 9 N.Y. 2d 554, 175 N.E. 2d 441 (1961).

77. 136 F. Supp. 201 (S.D.N.Y. 1955).

78. (Quoted by the court at p. 204): "It shall be unlawful for the . . . owner of any sea-going vessel . . . transporting passengers . . . to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred."

79. *Supra* note 77 at 205.

for the application of principles developed under rule 56, Federal Rules of Civil Procedure, 28 U.S.C.A. These principles called into play by defendant's motion for summary judgment, constitute a developing body of federal law. How then may English law be applied in determining this motion for summary judgment?

. . . There are additional reasons for our conclusion that federal law should govern the interpretation of this contract. The interpretation of the limitation clause relied upon by defendant involves important considerations of internal public policy.⁸⁰ . . . The parties' reliance on a statutory provision of American law, 46 U.S.C.A. 183b, indicates that construction of the limitation clause be determined by the decisions of federal courts construing that statute.

. . . Finally, the most salutary resolution of the conflicts problem is to ascertain the forum having the closest connection with the matters raised by this litigation. . . . The 'center of gravity' of the contract is within the jurisdiction of the United States.⁸¹

Surely the motive behind the reference to United States law in the time-bar clause in *Mulvihill*⁸² was the respectable one of averting a collision between the stipulated English law and the widely recognized national policy the statute embodied. These cases however suggest neither the good motives, the intent, the language, nor the best wishes of contracting parties will avail them to have a specified law rule their contract, when the court is convinced that a different, or perhaps only more convenient, law is relevant.

THE AVOIDANCE OF STIPULATED LAW

Judicial systems dislike inconvenience in locating the law to be applied, and therefore, availability of the law stipulated is a persistent problem contracting parties must face when wanting to specify a law for their contract. Several cases illustrate the ways in which United States courts avoid the uncertainties which may follow from the shadow of a foreign law cast across a litigation. They may decline

80. *Scheibel v. Agwilines, Inc.*, 156 F. 2d 636 (2d Cir. 1946); *Witte, et al. v. Nederlandsch Amerikaansche Stoomvaart Maatschappij*, 96 F. Supp. 485 (D. N.J. 1951).

81. *Supra* note 77, at 206. Two very similar time-bar provision cases in which however the courts struck the balance of contractual connections in favor of the stipulated Italian law are *Caruso v. Italian Lines, S.p.A.*, 184 F. Supp. 862 (S.D.N.Y. 1960), and *Pisacane v. Italia S.p.A. di Navigazione*, 219 F. Supp. 424 (S.D.N.Y. 1963). In each case the court said no stipulation of foreign law was conclusive for choice of law purposes.

82. *Supra* note 77.

jurisdiction, find the foreign law not proved, or find the view to a particular law not clearly expressed.

The equitable aspect of federal court jurisdiction is the turning point of *United States Merchants' Shippers' Insurance Co. v. A/S Den Norske Afrika og Australia Linie*.⁸³ Here a bill of lading under which goods were shipped on a foreign vessel, by a foreign shipper from Germany to China, and lost out of Colombo, specified all questions arising under the bill of lading should be governed by Norwegian law. The American insurer, as subrogee, brought an action of negligence against the shipowner. However, the district court denied jurisdiction on the ground that the balance of convenience greatly favored a Norwegian trial.

The libellant claims that because he is a citizen he has a right to sue defendant in a United States court, despite the fact that he is a subrogee. The Second Circuit affirmed the District Court on the ground that the jurisdiction of Federal District Courts to try the cases of alien parties depended upon whether or not its exercise was essential to justice. The subrogee failed to justify an exception to the general doctrine that his rights can rise no higher than those of his principal.

In like manner the real nature of the contesting parties controlled the result in *Cerro de Pasco Copper Corp. v. Knut Knutsen O. A/S*.⁸⁴ This was a libel by the Cerro de Pasco Copper Corp. in admiralty for the loss of chemical concentrates shipped from Callao, Peru, to Antwerp, Belgium. The contract was made in Peru by the shipper, a New York corporation, and defendant Norwegian corporation, with the contract stating: "Any dispute regarding the interpretation of the rules of this Bill of Lading is to be decided in Norway according to Norwegian law which is in every respect governing."⁸⁵ The shipper began the *quasi in rem* suit by attaching credits and effects in the hands of Kerr Steamship Company alleged to belong to respondent. However, it was found that in the type of sales contract the plaintiff shipper had with the Belgian vendee that the plaintiff was in the position of an assignee of the buyer.

Thus the court ruled:

Since the controversy, arising out of a contract made abroad and governed by foreign law, is really between aliens and concerns an event that occurred outside the United States and since none of the wit-

83. 65 F. 2d 392 (2d Cir. 1933).

84. 94 F. Supp. 60 (S.D.N.Y. 1950).

85. *Id.* at 61.

nesses to the explosion are in the United States or expect to be in the United States, I feel that justice requires that this court decline jurisdiction.⁸⁶

Among the cases demanding of contracting parties a clear manifestation of a view taken to a particular law is *Dorff v. Taya*,⁸⁷ a suit for recovery of prepaid freight where the carrier sank at sea. Although the bill of lading specified the contract of shipment was to be governed by Spanish law, the court ruled the narrow procedural defense of the Spanish statute of limitations had not been clearly contemplated by the generally phrased stipulation of law to displace the procedural law of the forum.⁸⁸

In *Hurwitz v. Hurwitz*,⁸⁹ the Appellate Division held a recitation of the laws of "Moses and Israel" were to govern an antenuptial agreement made in New York by New York residents, and relied on by litigants to affect their rights to New York realty, was not a manifest view to foreign law, because Israel was not at the time a sovereign state.

The doctrine precluding foreign law from controlling performance in New York of a New York contract unless the intent was manifest that it should control was applied in *Goodman v. Deutsch-Atlantische Telegraphen Gesellschaft*⁹⁰ to a case of holders of bonds and coupons of defendant German telephone company suing for defendant's failure to pay in United States dollars as specified in the deed of trust under which the bonds were marketed. The trust agreement stated it was to be covered by German law, and the plea was of intervening German law prohibiting payments in dollars.⁹¹ Although the court said: "If morals enter into the discussion of the conflict of laws in matters purely monetary, then what we deem right for the preservation of our financial structure cannot be wrong when employed by others,"⁹² it held for the plaintiff on a ruling that the contract said German law covered the obligations of the defendant but was silent as to the obligations and rights of the New York trustee.⁹³

86. *Ibid.*

87. 185 N.Y.S. 174 (1st Dept. 1920).

88. See *Overseas Trading Co., SA v. U.S.*, *supra* note 20, which upholds a generally phrased party autonomy clause.

89. 216 App. Div. 362, 215 N.Y.S. 184 (1926).

90. 166 Misc. 509, 2 N.Y.S. 2d 80 (1st Dept. 1938).

91. Similar legislation figured in the *Basel Life Insurance Company* case, *supra* note 40.

92. *Supra* note 90 at 81.

93. Likewise in *Hudson v. Continental Bus System, Inc.*, 317 S.W. 2d 584 (Tex.

It is plain, then, mere reference to a particular foreign law is insufficient unless fully set forth and clearly stated to be controlling. In *Jansson v. Swedish American Line*⁹⁴ the contract of passage was signed in Sweden, and the negligence relied upon occurred in Göteborg as the plaintiff was boarding defendant's ship. The contract made a reference to a section of the United States Code,⁹⁵ but otherwise made no reference to the law of any jurisdiction. The court ruled on the basis of the center of gravity theory Swedish law must apply to the validity of the contract's time bar provision, although such was the subject matter of the American statute referred to, because the contract contained no explicit provision that it was to be governed by some particular law.⁹⁶

So much for the failure of parties to manifest clearly their intent that some particular foreign law shall govern their contract. No more does American law supply the failure of parties to bring their foreign law into the courtroom with them. Where litigants fail to plead or prove foreign law the courts sometimes dismiss the contentions the foreign law is alleged to embody,⁹⁷ and sometimes apply the law of the forum.⁹⁸ A quaint example of the latter is *Todd Shipyards Corp. v. The City of Athens*.⁹⁹ With an account for above \$400,000 for repairs in default of payment, Todd Corp. libelled the ship *City of Athens*, and the ship was sold. Various individuals and classes of persons then sought to assert maritime liens in the ship herself. For example, one was the tort claim of Markos Mamoujelos, objecting to the adequacy of \$4,000 allowed him by the Commissioner to the District Court for findings of fact. The Commissioner reported,¹⁰⁰ the ship's articles specified Greek merchant marine law was to govern the liability of the owner in certain circumstances. Fortunately for the Commissioner, no foreign law was pleaded or proved, and he recommended the application of American admiralty law. The court so ruled.

1958), plaintiff sued in tort for an injury occurring in Mexico or in the alternative for breach of a bus tour contract made in Texas, and the court applied Texas law despite the location of the injury because the parties had taken no view expressed or implied to the law of Mexico.

94. 185 F. 2d 212 (1st Cir. 1950).

95. 46 U.S.C.A. 183b, the time-bar provision statute important to the decision in *Mulvihill v. Furness, Withy & Co., Ltd.*, *supra*, note 77.

96. *Supra*, note 78, p. 219, quoting *Liverpool and Great Western Steam Navigation Co. v. Phoenix Insurance Co.*, 129 U.S. 397, 458 (1889).

97. *Philp v. Macri*, 261 F. 2d 945 (9th Cir. 1958).

98. *Blumenthal Import Corporation v. Thos. & Jno. Brocklebank, Ltd.*, 48 F. 2d 727 (3d Cir. 1945).

99. 83 F. Supp. 67 (D. Md. 1949).

100. *Id.* at 83.

The discussion of these cases has outlined the present state of party autonomy in the United States in contracts involving foreign nations' laws.

CONCLUSION

Close to the surface of all these cases is some judicial suspicion that contracting parties specifying a foreign nation's law to govern their contract are seeking to subvert the substance of justice courts feel it their duty to nurture. Recurrent in the language of the decisions are appeals to abstract public policies and conscientious reminders, where party autonomy is acknowledged, that not very different motives and interests would require different results.

The courts are inconsistent in their concepts of what party autonomy is or of what it demands.¹⁰¹ Very few of these cases¹⁰² demonstrate a real grasp of what appears to be the essence of the party autonomy problem: whether or not contracting parties may specify the law that is to validate the rights and duties their contract frames.

The answer to this in the United States at the present time, where a foreign contract contemplates United States law or where a domestic contract contemplates foreign law, appears to be *no*.

Persons active in international commerce deserve the security of having this aspect of their uncertainties clarified. The time is due for courts to state, and contracting parties to understand, in looking toward the law of a foreign country in their contracts, if they are rather raising false hopes that settling possible legal strife.

101. Burton, *The Uniform Commercial Code and Conflict of Laws*, 9 AM. JOUR. COMP. LAW 458, 462-463 (1960).

102. *Siegelman v. Cunard White Star Line, Ltd.*, *supra* note 54, is notable in this respect.