

Exploration of Multiple Paths for the Application of Laws in Foreign-related Contractual Torts from the Perspective of Private International Law

Shi Li

Anhui University of Finance and Economics, Bengbu 233030, China
Email: 1085797705@qq.com

How to cite this paper: Li, S. (2025). Exploration of multiple paths for the application of laws in foreign-related contractual torts from the perspective of private international law. *Law and Humanities*, 1(1), 43–50. ISSN Print: 3079-5117, ISSN Online: 3079-5125.

<https://doi.org/10.63313/LH.9006>

Published: 2025-05-12

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Abstract

This paper aims to explore multiple paths for the application of laws in foreign-related contractual torts within the scope of private international law. By analyzing traditional principles of law application, such as the law of the place of the tort, the law of the forum, and the principle of party autonomy, and elaborating on modern development paths, including the principle of the most significant relationship, the method of characteristic performance, and the interest analysis method, and combining with the influence of international treaties and domestic legislation, as well as using practical case analysis, this paper reveals the characteristics, advantages, and limitations of each path and its application methods in practice. It is expected to provide theoretical and practical guidance for solving the complexity of the application of laws in foreign-related contractual torts, protect the rights and interests of the parties, promote the improvement and development of private international law in this field, and maintain the order of international economic exchanges.

Keywords

Private International Law; Foreign-related Contractual Torts; Application of Laws; Multiple Paths

1. Introduction

Under the wave of globalization, international economic exchanges are becoming more frequent, and disputes over foreign-related contractual torts are also increasing. Since such disputes involve legal norms and interest conflicts of different countries, how to determine the applicable law has become a key issue in the field of private international law. Traditional paths of law application are gradually showing their deficiencies when dealing with complex and changeable foreign-related contractual tort cases. Therefore, exploring multiple paths of law application is of great practical significance, which helps to achieve fairness and rationality in law application and promote the development of private international law theory and practice.

1.Traditional Paths for the Application of Laws in Foreign-related Contractual Torts

1.1. The Principle of the Law of the Place of the Tort

The principle of the law of the place of the tort has long occupied an important position in the application of laws in foreign-related contractual torts. Its theoretical basis lies in the close natural connection between the tort and the place of the tort. The law of that place can intuitively reflect the background of the occurrence of the tort and the local public order and good customs, thus providing a reasonable legal standard for the determination of tort liability, and also meeting the predictability expectations of the parties regarding the consequences of their actions.

However, in practice, the determination of the place of the tort is not always clear and definite. For example, in transnational network tort cases, the tort may be carried out through multiple network nodes in different countries. The place of the tort may involve the place of information release, the place of dissemination, the place of receipt, etc., making it complicated and difficult to accurately define the place of the tort. In addition, different countries have different standards for determining the place of the tort. Some countries focus on the place where the tort is committed, while others tend to focus on the place where the consequences of the tort occur, which further exacerbates the uncertainty and conflict in the application of laws.

1.2. The Principle of the Law of the Forum

The principle of the law of the forum advocates that foreign-related contractual tort cases should apply the law of the place where the court is located. The main advantage of this principle is that the court has a high degree of familiarity with the domestic law, which can ensure the efficiency and certainty of judicial trials and avoid the difficulties in ascertaining and the misunderstandings caused by applying foreign laws. At the same time, it also reflects the exercise of national judicial sovereignty and safeguards the public interests and legal order of the forum state.

However, this principle also has obvious disadvantages. Excessive reliance on the law of the forum may lead to the behavior of the parties "forum shopping", that is, the parties choose to file a lawsuit in a specific court in order to obtain favorable legal results, which undermines the fairness and stability of the application of laws. Moreover, in some contractual tort cases with obvious international elements, the law of the forum may have a weak connection with the actual situation of the case. Applying the law of the forum may not fully consider the specific circumstances of the case and the reasonable interests of the parties, which is not conducive to the healthy development of international economic exchanges.

1.3. The Principle of Party Autonomy

The application of the principle of party autonomy in the field of the application of laws in foreign-related contractual torts is an important breakthrough in traditional

principles of law application. This principle respects the will of the parties and allows the parties to independently choose the law applicable to contractual tort disputes within a certain range, reflecting the spirit of freedom of contract and the recognition of the parties' independent decision-making.

However, the application of the principle of party autonomy in foreign-related contractual torts is subject to many restrictions. On the one hand, the time, method, and scope of the parties' choice of law must comply with legal provisions and shall not violate the public order and mandatory legal provisions of the forum state. On the other hand, in some contractual tort cases involving the protection of public interests and vulnerable groups, such as consumer contract torts and labor contract torts, in order to ensure fairness and justice, the party autonomy is often more strictly restricted to prevent the dominant party from using the choice of law clause to damage the rights and interests of the disadvantaged party.

2. Modern Development Paths of the Application of Laws in Foreign-related Contractual Torts

2.1. The Principle of the Most Significant Relationship

The principle of the most significant relationship, as a flexible and elastic method of law application, has been widely recognized and applied in the field of foreign-related contractual torts. This principle abandons the mechanical nature of traditional single connection points. It comprehensively considers various factors related to contractual tort disputes, such as the domicile of the parties, the place of contract conclusion, the place of performance, the place of the tort, the location of the subject matter of the contract, as well as the nature and purpose of the contract. By weighing the relative importance of these factors, it determines the law that has the most significant connection with the case as the governing law.

The advantage of the principle of the most significant relationship is that it can flexibly select the most appropriate law according to the actual situation of specific cases, avoiding the rigidity and limitations of traditional principles of law application, and being more capable of achieving fairness and justice in individual cases. For example, in a case of tort in a transnational technology transfer contract, although the place of the tort may be in a specific country, the negotiation and conclusion of the contract, as well as the development and application of the technology, are mainly closely related to the domicile or business place of the parties. In this case, according to the principle of the most significant relationship, the law of the domicile or business place of the parties may be selected as the governing law, thus resolving the dispute more comprehensively and reasonably.

2.2. The Method of Characteristic Performance

The method of characteristic performance is a specific method for determining the governing law of a contract developed on the basis of the principle of the most sig-

nificant relationship, and it has gradually been applied in the field of the application of laws in foreign-related contractual torts. This method analyzes the nature and characteristics of the contract, identifies which party's performance behavior best reflects the essential characteristics of the contract, and then takes the law of the business place or habitual residence of that party as the governing law of the contract, unless there is a law with a closer connection.

In foreign-related contractual tort cases, the method of characteristic performance helps to simplify the process of law application and improve the certainty and operability of law application. For example, in disputes over torts in international sales contracts of goods, the seller's act of delivering goods is usually regarded as the characteristic performance behavior. Therefore, in cases where the parties have not chosen the law, the law of the seller's business place is generally given priority as the governing law. However, it should be noted that the method of characteristic performance is not absolute. For some complex contract types or special transaction structures, it may be difficult to accurately define the characteristic performance behavior, and thus a comprehensive judgment needs to be made in combination with the principle of the closest connection to ensure the accuracy of law application.

2.3. The Interest Analysis Method

The interest analysis method emphasizes that in the process of applying laws in foreign-related contractual torts, all parties' interests involved should be comprehensively considered, including the private interests of the parties, the public interests of the forum state, and the interests of other relevant countries. Through in-depth analysis and weighing of these interests, the law that can best protect and balance the interests of all parties is selected as the governing law.

In practical application, the interest analysis method requires judges not only to be familiar with legal provisions but also to have an in-depth understanding of various interest relationships and policy factors behind the case. For example, in cases of transnational environmental pollution torts, judges need to consider the serious impact of the pollution act on the environment and the health of residents in the victim country, as well as the reasonable demands of the country where the tort occurs for economic development and industrial interests. At the same time, they also need to take into account the common interests and responsibilities of the international community in environmental protection. On this basis, they carefully select the appropriate law to resolve the dispute. However, the interest analysis method is highly subjective, and different judges may have differences in the weighing and judgment of interests, which may affect the consistency and stability of law application.

3. The Influence of International Treaties and Domestic Legislation on the Path of Law Application in Foreign-related Contractual Torts

3.1. The Role of International Treaties

International treaties play an important role in coordinating and unifying the application of laws in foreign-related contractual torts. For example, the Rome II Regulation, as an important legislative achievement of the European Union in the field of the application of laws for non-contractual obligations, makes detailed and systematic provisions on the application of laws in foreign-related contractual torts. It establishes a legal application system with the principle of party autonomy as the leading principle, combined with the principle of the most significant relationship and other specific connecting factors. It provides a unified legal framework for EU member states in handling foreign-related contractual tort cases, reduces legal conflicts and uncertainties, and promotes the integration of the EU internal market and the smooth progress of cross-border transactions.

In addition, some global international conventions, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), although mainly focusing on the provisions regarding the conclusion and performance of contracts, also have a certain indirect impact on tort issues that may arise during the performance of contracts. They provide certain references and guidelines for resolving foreign-related contractual tort disputes and promote the coordination and development of private international law on a global scale.

3.2. The Perfection of Domestic Legislation

Domestic legislation in various countries is also constantly adapting to the development trend of the application of laws in foreign-related contractual torts, and improving and innovating relevant legal systems. Many countries clearly stipulate the rules for the application of laws in foreign-related contractual torts in their legislation, combining traditional principles with modern development paths to form a legal application system with national characteristics. For example, China's Law on the Application of Laws in Foreign-related Civil Relations makes special provisions on the application of laws for foreign-related tort liabilities. It establishes multi-level legal application rules such as the law of the place of the tort, the law of the common habitual residence of the parties, the principle of party autonomy, and the principle of the most significant relationship. It provides a clear legal basis for Chinese courts to handle foreign-related contractual tort cases, and at the same time reflects China's efforts to keep pace with the times and align with international standards in the legislation of private international law.

4. Case Analysis: The Specific Application of Multiple Paths in Practice

4.1. Case Introduction

A Chinese electronic product manufacturing enterprise, Company A, signed a contract for the export of electronic products with a German sales company, Company B.

It was agreed that the goods would be loaded at the Port of Shanghai, and the destination was the Port of Hamburg, Germany. There was no clear provision on the applicable law in the contract. During the transportation of the goods, due to the improper operation of the crew of Company C, which owned the carrying ship, part of the goods were damaged. Company B sued Company A and Company C in a German court, demanding that Company A bear the liability for breach of contract and Company C bear the tort liability.

4.2. Analysis and Selection of the Law Application Path

The principle of the law of the place of the tort: The tort occurred during the transportation of the goods, involving the seas of multiple countries, making it difficult to simply determine the place of the tort. If the traditional principle of the law of the place of the tort is applied, the uncertainty in the application of law may arise due to the differences in the determination of the place of the tort among different countries. For example, if the place where the tort is committed (the law of the country where the ship is located) is taken as the standard, the laws of multiple countries may be involved; if the place where the consequences of the tort occur (the place where the goods are damaged may be the Port of Hamburg, Germany) is taken as the standard, German law may be applied, but there is a lack of clear and unified standards.

The principle of the law of the forum: The German court may be inclined to apply German law, which can ensure the convenience and certainty of the court's trial to a certain extent. However, from the actual situation of the case, the connection between Germany and the contractual tort dispute is not the closest. The place of contract conclusion is in China, and the place of goods shipment is also in China. Company A, as a party to the contract, conducts its main business activities in China. Simply applying German law just because the lawsuit is filed in a German court may ignore other important connecting factors of the case, resulting in unfairness to Company A and Company C, and is not conducive to the stability and predictability of international commercial transactions.

The principle of party autonomy: Since there is no prior agreement on the applicable law for tort disputes in the contract, this principle cannot be directly applied at the initial stage of this case. However, during the litigation process, the two parties can try to negotiate and choose the applicable law. However, considering that the dispute has entered the litigation process, the possibility of the two parties reaching a unanimous choice is relatively small, and the choice needs to be made within the scope permitted by the law of the forum, and at the same time, it cannot violate the restrictions such as the public order of Germany.

The principle of the most significant relationship: Through a comprehensive analysis of the connecting factors of this case, the place of contract conclusion is in China, the place of goods shipment is in Shanghai, China, the domicile of Company A is in China, the domicile of Company B is in Germany, and the tort occurred during

transportation (connecting multiple countries), but the destination of the goods is Hamburg, Germany. Overall, China has an important connection with the conclusion and performance of the contract, and Germany is associated with the destination of the goods and Company B. After further weighing various factors, aspects such as the production and manufacturing of the goods and the main performance behavior of the contract have a closer connection with China. Therefore, Chinese law may be recognized as the law that has the most significant connection with the contractual tort dispute. However, when making specific judgments, the German court will also fully consider German public policy and interest factors to ensure that the applicable law does not conflict with the basic legal principles and public interests of Germany.

The method of characteristic performance: In this international sales contract of goods, the act of Company A, as the seller, delivering the goods has the characteristics of characteristic performance. Under normal circumstances, Chinese law, which is the place of Company A's business operation, should be given priority. However, it also needs to be comprehensively judged in combination with the principle of the most significant relationship. Due to the intervention of the tort during the transportation process and factors such as Germany being the destination of the goods and the domicile of Company B, Chinese law cannot be simply determined as the sole governing law based on the method of characteristic performance. Instead, it should be regarded as an important reference factor and considered together with other connecting factors to finally determine the most appropriate applicable law.

4.3. Judgment Results and Enlightenment

After the trial, the German court comprehensively considered the above various law application paths and factors. Finally, it partially applied Chinese law to determine the scope of liability of Company A, and at the same time, referred to relevant German laws to determine the tort compensation liability of Company C, fully taking into account the rights and interests of all parties during the contract performance process and the reasonable application of laws of different countries.

This case enlightens us that in the practice of applying laws in foreign-related contractual torts, a single law application path often cannot comprehensively and fairly resolve complex disputes. Each principle and method of law application does not exist in isolation, but is interrelated and mutually influential. When handling cases, judges need to comprehensively examine various connecting factors involved in the case, flexibly apply different law application paths, and while protecting the legitimate rights and interests of the parties, maintain the certainty, fairness of law application and the stability of international commercial transactions. In addition, the development of private international law requires countries to continuously strengthen legal exchanges and coordination, reduce the uncertainty caused by legal differences, and promote the healthy and orderly development of international economic exchanges.

5. Conclusion

The multiple paths for the application of laws in foreign-related contractual torts from the perspective of private international law have gradually taken shape and developed through long-term theoretical research and practical exploration. The traditional principles of the law of the place of the tort, the law of the forum, and the principle of party autonomy provide a basic framework for the application of laws to resolve foreign-related contractual tort disputes. The modern principles of the most significant relationship, the method of characteristic performance, and the interest analysis method further enrich and perfect this system, enabling it to better adapt to the complex and changeable international economic exchange environment and the actual needs of foreign-related contractual tort cases.

The formulation of international treaties and the improvement of domestic legislation provide institutional guarantees and regulatory guidance for the application of multiple paths, promoting the unity and coordination of the application of laws. However, in practice, the specific application of each path still faces some challenges and problems, such as the balance between the certainty and flexibility of the application of laws, the reasonable limitation of the discretionary power of judges, and the coordination and connection between different methods of law application.

In the future, with the continuous development of private international law theory and the deepening of international economic cooperation, the multiple paths for the application of laws in foreign-related contractual torts will continue to evolve and optimize. This will help to resolve foreign-related contractual tort disputes more fairly and efficiently, protect the legitimate rights and interests of the parties, and promote the stable and healthy development of the international economic order. At the same time, countries should strengthen exchanges and cooperation in the field of private international law, jointly address the new problems and challenges faced by the application of laws in foreign-related contractual torts in the context of globalization, and promote the process of unifying private international law.

References

- [1] Xiao,Y.P.(2017). Principles of Private International Law.Law Press,China,25.
- [2] Song,L.B.(2018). The Current Situation, Characteristics and Improvement Suggestions of the Application of Law in General Foreign-related Torts in China.Jiangxi Social Sciences,China,30.
- [3] Li,S.Y.(2021). Private International Law.Peking University Press,China,37.
- [4] Qi,X.Q.(2011). Principles and Essentials of the Application of Law in Foreign-related Civil Relations.Law Press,China,154.
- [5] Song,L.B.(2003). An Analysis of the Challenges of Judicial Practice to the Research Methods of Private International Law in China.Legal Forum,China,100.
- [6] See Symeon C. Symeonides(2014). Codifying Choice of Law Around the World. Oxford University Press,England,100.