Migration Letters

Volume: 20, No: S2(2023), pp. 129-143

ISSN: 1741-8984 (Print) ISSN: 1741-8992 (Online)
www.migrationletters.com

Towards a New Direction in the Substantial Focus of Intellectual Property Contracts Legal Study in Private International Relations

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Abstract

Contracting between the parties is a means through which the parties can guarantee their rights and implement their obligations, and thus the prosperity of society, especially contracting in the intellectual field and the exploitation of mental rights. However, contracting sometimes lacks the voluntary choice of the parties regarding the law to be applied, which requires searching for means through which the contract is assigned to a legal system, some of which are traditional and fixed means of attribution that do not give the judge freedom in estimating them, and others are modern, in which the judge can have authority in estimating them.

Keywords: *traditional attribution controls, modern attribution controls, objective focus, intellectual property contracts, conflict of laws.*

Introduction

The existence of a law governing the contract is a means to guarantee rights and implement contractual obligations. Therefore, there are international contracts that require that the contractual relationship be objectively focused, in order to define rules of attribution and apply them to the contract, through special attribution controls that differ from one contract to another depending on the circumstances surrounding the contract and its nature.

The purpose of that focus is to ensure that there are no contractual relationships that are not governed by law. This prompted us to search for the controls that govern these relations in private international law by examining the traditional attribution controls, and showing the extent of their rule for this type of contract, as well as the modern attribution controls within the scope of private international relations.

Where it reflects a development in the means of contracting in our current era, the importance of the subject from both the scientific and practical point of view, the conclusion of the contract is no longer taking place between attendees in a specific place, but rather it is taking place through electronic means of communication linked to the Internet, between people separated by vast distances, on continents. The whole world, as they can be in one place, but the subject of implementation is in another place, or a foreign element interferes in the contract, in any way, especially with regard to intellectual property contracts, because it is an important commodity in our present time, and this leads to the existence of international contracts Its nature differs from one contract to another, which means that it is possible that the traditional attribution controls may not be compatible with the new contracts, so it is necessary to search for modern

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attribution controls, as there are many contracts that are concluded in this framework, and what indicates the importance of that What was stipulated in the agreements that included resorting to distinguished performance, as well as researching the most relevant links in the contract, by looking at the contract and its nature, and the surrounding circumstances, all of this is in the interest of the contracting parties in particular and the international community as a whole.

The research aims in this topic to show the traditional and modern attribution controls, and to show whether it is possible to rely on a unified control in all contracts, in order to objectively focus the contracts under study, or that each contract has a control that suits its nature, so we will explain these controls in their two parts. And what can be appropriate to the development in the methods and means of contracting, it is not possible for a contract to remain outside the framework of the law. Here, the role of the judge is evident in the search for the modern link, and we will show these controls in addition to their advantages and disadvantages, both traditional and modern, and what is the position of jurisprudence and comparative laws regarding them.

The problem of the research falls under an important question, that the traditional rules of attribution can be completely dispensed with, and is it possible to resort only to the modern rules of attribution? Are these controls, when applied, compatible with all contracts, or does the matter differ from one contract to another?

What are the traditional attribution controls and their most important characteristics and advantages? And the basis for determining it? What are the modern isnad controls and their most important characteristics and advantages? And the basis for determining it? What is the legislative and international legal position on it?

The scope of the study is determined by the fact that the requirements of the research on a topic are related to the traditional attribution controls, which paved the way for the emergence of modern attribution controls, but it can be considered for its relative novelty by linking these controls to intellectual property contracts, which did not take up space in the research in the field of intellectual property rights, because The topic relates to focusing these contracts objectively to determine an attribution officer that is suitable for contracts related to intellectual property.

Accordingly, we consider resorting to the descriptive approach on the one hand, and the analytical approach on the other hand, which helped in bringing together the diaspora of the subject within the method of comparative research, where we analyzed the legislative and jurisprudential positions and compared them with each other, and we tried to work on finding practical solutions by applying objective rules to contracts. related to intellectual property by concentrating its elements and finding the officer who governs the relations arising from it, by standing at the position of comparative legislation in France and America as Western legislators and each of Egypt and Iraq as Arab legislators, as well as international agreements related to the subject and scope of the research, and research in judicial rulings and opinions Jurisprudence if we help the search to find those provisions as they relate to the subject.

Therefore, in order to understand the subject of the study, and to reach the desired results from it, we will divide the research into two sections, in the first of which we show the traditional objective focus of the attribution controls, while we devoted the second topic to researching the modern objective focus of the attribution controls.

We will conclude the study with a conclusion highlighting the most important findings and suggestions that we reached in this study.

The two researchers

The first topic

The traditional thematic focus of attribution controls

The beginning of the emergence of the rules of attribution and the basis for their application was an international courtesy, which was brought by the Italian school and the rules of attribution are indirect rules, as they refer to the applicable law, in contrast to the objective rules that give the solution directly.

And at the beginning, attribution is defined as: “the process of linking a specific legal situation (legal situation, legal relationship) to a legal system.” When the legal relationship is centered with its material elements in a specific country, the law of that country is applied As for the rule of attribution, it is defined as: “an indirect, national procedural rule that guides the judge to the law applicable to a dispute tainted by a foreign element ” .

As the judge before whom the dispute is presented, can apply a foreign law, and the application of the foreign law requires that he have been appointed according to the rule of the judge’s conflict, and the basis for applying this law is that it is considered, like all other rules of the judge, applied in a natural way in the interest of the judge. The judge’s legal system, and the implementation of his legislative policies, and the jurist Story believes that the application of this law achieves the mutual interest and the desired benefit from its application, and avoids the pitfalls related to the application of another law, even if it is the judge’s law, then the matter is subject to considerations of necessity and here the reference is made to the desired interest from behind the application The judge's legal system, which is represented in obtaining rational, appropriate, and rational solutions in cases of private international law .

From this point of view, we can define attribution as a process during which the legal system in which the law to be applied can be determined.

the attribution rule, we can define it as a national guiding rule through which the judge can infer the law applicable to a contract that includes a foreign element.

the second flexible, and attribution is used only in the absence of an explicit or implicit voluntary choice. And what I took from these controls by dividing them into two requirements:

The first requirement

Personal support officer

Countries differ in terms of considering and attributing the personal officer, so is it based on his attribution to the homeland or to the nationality, and to clarify both officers, we will discuss them successively as follows:

First branch

Domicile officer

Some jurisprudence believes that the domicile law is the law that applies to eligibility, while others see that it is the nationality and civil status law of people being the personal law, and this is what the old Italian school advocated in the fifteenth century, which believes that nationality does not represent a control for determining the personal law of the parties. Contracting.

The Anglo-Saxon system adopted this rule, as many countries adopted it as their personal law, such as Britain, Denmark, Ireland, America, and some Latin countries, based on it being the residence and business center, as it represents the link between man and the earth, as well as the ease of science. by law by others.

Despite this, criticism was leveled against him, the most important of which is that the domicile at the present time has become an officer who does not keep pace with the development in contracts and modern means of communication, which led to the Vienna Convention of 1986 regarding the contract for the sale of international goods, abandoning this officer, as (M / 1) referred to Applying the provisions of this agreement to contracts for the sale of goods to avoid the problems of different workplaces of the parties.

With regard to contracts related to intellectual property, there are no legal texts or agreements that regulate contracts related to intellectual property and their literal designation. It is regulated by comparative legislation in legal texts or an agreement dedicated to these contracts, where the Rome regulation indicated in its article (4) referred to the applicable law in the absence of choice, and then as for France, it is one of the countries that signed the first Rome regulation, and then the provisions of the regulation are the ones that apply, and the law The Egyptian Civil Code referred to the applicable law in Article (19) of it with regard to contracts in general, which indicated that the law is applied to the contract at the time of the agreement at the beginning, and when the voluntary choice is absent, we search for the law to be applied through the circumstances surrounding the contractual process, and if this is not possible, then it becomes To apply the law of the common domicile of the parties, if the latter is denied, the law of the place of conclusion applies, as did the Iraqi civil law in Article (25) of its civil law.

Section two

nationality officer

Italian jurisprudence advocated that personal law is the law of nationality and not the domicile, and this approach was led by the jurist Mancini, who considered nationality to be the basis for choosing the law, by being an attribution officer that determines the obligatory law and the jurists of private international law, and that the origin within the framework of private international law is the personality of laws.

The Latin trend has adopted the nationality law, and this trend represents the vast majority, in terms of adopting the personal law, based on nationality, including France, Italy, Germany and all Arab countries, where they relied on its description of continuing the nationality law, as it moves with the person despite his regional instability, on the basis of The opposite of the domicile, where the nationality is attached to the person, and moves with him, as it is a fixed control, while the domicile is a moving control in addition to the ease of proof.

Despite the positives mentioned, nationality also has negatives, as it can be multiple for one person. To have more than one nationality, and there are factors that contributed to the possibility of multinationality, including the increase in migration and wars, in addition to the cultural and social mixing between different countries, and some countries require the purchase of real estate with a certain value in order to obtain citizenship and the Vienna Convention on the International Contract of 1980, which It considered that the domicile is the basis for determining the internationality of the contract.

However, nationality cannot be viewed in terms of difficulty in obtaining it, especially in the case of buying a property, and then there is difficulty in obtaining it, and nationality faces difficulties and criticisms. Likewise, the matter in the person’s home differs from the home in terms of the possibility that there is a person from a specific country. It is not easy to obtain, and it requires procedures that are not easy in order to acquire a nationality. Despite the lack of taking nationality as a personal criterion, it is equivalent to the importance of the homeland and faces what the homeland faces from the previous deficiencies that were mentioned.

In addition, the conditions for acquiring nationality, such as buying a property, require an abundance of cash that may not be available to the majority, so we see that the nationality

officer is more appropriate to take into account, especially in contracts in which the nationality officer provides greater protection than the domicile officer, and the French Court of Cassation adopted the common nationality officer, to determine The applicable law in its judgment issued on (November 2, 1937).

In the same way, the Italian legislator followed in Article (25) of the Civil Code of 1942. However, the French judiciary stipulated in its ruling issued on April 23, 2013, that nationality should not be satisfied and considered it a non-essential criterion in that.

The second requirement

The attribution officer associated with the place of concluding and executing the contract

In this requirement, we will indicate the control of the place of conclusion as a criterion for determining the applicable law, and then we will indicate the control of the place of implementation, as follows:

First branch

The officer of the place of conclusion

The introduction of this control appeared in the Middle Ages, when the contract was subject to the place of conclusion without distinguishing between form and content, and the existence of conflict in commercial transactions contributed to the emergence of this control as it is not a modern rule.

The determination of the place, either explicitly or implicitly, is inferred from the circumstances of the contract, and what can be closely related to it, and it should be noted what was stated in Article (4/2) of the first Rome regulation, which subjected the contract to the law of the country of residence Where the usual residence of the distinguished performer in the contract is located, which according to Article (19/3) is the residence of the distinguished performer at the time of concluding the contract, and then it is taken as the place of conclusion.

And one of the advantages of adopting the place of conclusion is the unity of the law that governs the contract being it, and it also achieves legal security through the presence of prior knowledge of the law, which contributes to the stability of transactions, but it has disadvantages, the most important of which is that the place of conclusion is from being an accidental place, just as the contract is about The way of modern means connected to the Internet, and the possibility of contracting between absentees makes it difficult to adopt this officer, and despite the shortcomings of this place, some countries have adopted it, including Italy.

In addition, the Egyptian Civil Code indicated in the text of its Article (19) and Article (25) of the Iraqi Civil Code, which were previously referred to, here it indicated that the subject of conclusion should be one of the available options when there is no express choice.

Section two

Execution officer

The jurist Savini is the first to refer to this rule in the attribution of the international contract, as it achieves the interest of the parties, as well as the interest of others by achieving legal security for them through their knowledge of the existence of this relationship until the fruit of the contract is harvested between them, as it guarantees the unity of the law applicable to the contract.

However, this control has several shortcomings. It is difficult to apply it when the place of execution is multiple, and then leads to submission to different laws , just as the first regulation of Rome did not provide an explicit text explaining this control, but it is possible to rely on the circumstances of the contract, which he referred to in the place of

implementation of the law. The Egyptian Civil Code, Article (19) and Article (25) of the Iraqi Civil Code, which also referred to this Conflict jurisdiction of the law, and Article (15/c) of the same law referred to the application of Iraqi law, when one of the parties is a foreigner suing before an Iraqi court regarding a contract concluded in Iraq, and an example of this is in the case of a licensing contract for the exploitation of a patent inside Iraq, and the owner The licensed mark is of English nationality and the licensee is of Syrian nationality, and there has been a conflict of jurisdiction and it is subject to the Iraqi judiciary, whether the conclusion or execution took place in Iraq .

As for the legal persons in contracts related to intellectual property, when one of the parties is a research institution, and the other party is a working inventor, a question arises about the applicable law regarding the eligibility of these persons, as the French Civil Code indicated in Article (1145), because this eligibility is limited to the works that arose. For the purpose of achieving them in accordance with what is specified in their regulations , and the Egyptian Civil Code in the text of M (11/2) indicated that the legal system for these foreign legal persons such as companies, associations and institutions, is subject to the law of the state in which the main management center of the legal person is located, However, the same text contained a restriction on its content. When this legal person (institution or publishing house) begins its activity in Egypt, the Egyptian law applies, if the country in which the publication took place, for example, for a publishing house, where despite the adoption of the head office officer It is initially limited by restrictions in the case of directing the activity inside Egypt, and the same position was adopted by the Iraqi law in its article (49).

As for the form of the contract, we already mentioned that Article (11) of the first Rome regulation stated in it, “The contract concluded between persons, or their agents in different countries at the time of its conclusion, is officially valid, if it meets the formal requirements of the law that governs in terms of substance, according to this regulation.” or the law of any of the countries in which either party or their agent was present at the time of the conclusion, or the law of the country in which either party had his habitual residence at that time. Where an aspect of jurisprudence favors referring to the law of the country of conclusion, in order to know the position of the legislator on the form of the contract, and whether it requires a specific form or not, and the pain itself with regard to proving the legal behavior, it is also due to the country of conclusion to know the means of proof specified by the legislator.

As we have previously indicated, the optional and mandatory orientation regarding formality, the position of the country of conclusion and the orientation of comparative laws in this matter. As for the subject of implementation, it is one of the criteria upon which it is based to determine the applicable law, because it represents a natural focus of the contractual bond, and a closer bond to the contract, since private international law relies on this focus through the material elements of the contract, and applies the law that achieves the interest of individuals, but it has disadvantages. The most important of them is represented in the multiplicity of the subject of the obligation, which makes it difficult to determine, which can sometimes identify a chief subject for the implementation of this obligation, and sometimes it is difficult.

And there is a trend of modern jurisprudence in favoring this officer over other controls, and one of the applications of this officer is what the Swiss judiciary adopted, as it is considered as a criterion that is applied in the case of silence about defining the law .

We tend to say that the importance of this rule, and that despite the criticism leveled at it, it is possible to indicate the main subject of implementation, and the matter remains dependent on the judge in determining this subject, by looking at the nature and circumstances of the contract, as we see that specifying the subject matter in the contracts under discussion is Easier in other contracts, as they are qualitative contracts, and we base our perception of this on what is governed and regulated by the texts of Rome, by

requiring regular work as an officer who helps determine the law to be applied in work contracts, and the same is consumption contracts.

In addition, the organization and the agreement stipulated that the individual work contract be subject to the law of the country in which the worker carries out his work by executing the contract, as usual, when the parties to the contract did not take the initiative to choose the law applicable to the contract despite the fact that it may be a temporary work to work in another country and this is indicated by Article (8/2) .

The second topic

Modern thematic focus of attribution controls

The matter did not stop at assigning contracts to rigid attribution controls, and after many criticisms were leveled at it, which were a motive for the emergence of flexible attribution through the application of modern attribution controls, whether it was (objective focus or close links, distinguished performance), or that the application of any of These controls are conditional on the absence of a voluntary choice of the contracting parties, so we decided to examine the modern attribution controls, and their applicability to contracts related to intellectual property by stating them successively, as follows:

The first requirement

The officer of the close bond between the contract and the legal system

This officer put forward the jurist Patiful, who was influenced by the English judiciary, as he relied on the focus of the contract through his adoption of the place of execution initially and the application of his law, but the matter was not without difficulties when the place of execution was multiple, and then relied later on the circumstances and circumstances of the contract, as he looked at each A contract in isolation from others, and the surrounding circumstances, and after that many applications of this objective focus appeared, both in terms of the contract being assigned to a specific law, depending on the circumstances and circumstances of each contract.

Where the search is for the closest bond between the contract and the law, and the judge investigates that from the circumstances of the contract and what surrounds it, as well as looking for the center of gravity in the contractual relationship, and then applies the law of the state with the closest bond, but Patiful believes that the role of the will is just a focus of the bond The contract is in a specific place, and in light of the spatial concentration of the association, the role of the judge appears, and then he does not see that the will is the one who chooses the law of the contract.

It is paradoxical that this link is not required in the voluntary choice, whether explicit or implicit, taking into consideration the due reservation regarding the application of the texts binding on the state, in which there are all the elements of the center, the subject of the contract.

This rule is not devoid of drawbacks, like the rigid controls that preceded it, as it gives authority to the judge that enables him to impose his will, an authority to amend the choice, in the absence of a closer link between the contract and the law. Application, as it establishes general rules of attribution and does not count on each contract separately, which sometimes leads to a lack of determination of the center of gravity in the contractual relationship, and despite the criticism directed at it, it has applications in the judiciary and support from contemporary jurisprudence.

Among the judicial applications of this principle is what was adopted by the American judiciary, where the judge considers the circumstances and circumstances of the contract, and then the assignment is made to what is called the law of the private contract, and it was preceded by the French judiciary before the entry into force of Rome and the English judiciary.

Also, the introduction of this control violates the legal security that is necessary for the stability of transactions, as this officer is resorted to only when a dispute occurs, and therefore the contracting parties may have chosen a specific law, and when adopting this control, the judge applies the law that is most closely related to the contract, but it is relied upon to others. Also, the Rome Agreement took voluntary choice, whether explicit or implicit, and did not pay attention to the objective focus, and this is what the countries of the European Community adopted after signing the Treaty Rome and France are among the countries that took this approach.

its third paragraph, referred to the application of the law of the country most closely related to the contract, and the same article indicated in its fourth paragraph that when the law could not be specified, the law most relevant to the contract should be applied.

One of the advantages of adopting this rule is that there is no free contract. Every contract is governed by a law that is closely related to it. There is unity in the law. The contract is not subject to more than one law. Rather, the judge specifies the law of a specific state related to the contract by its close bond. If a contract is concluded between an author and a publishing institution, without specifying the law to be applied to the contract, and the headquarters of the publishing establishment was located in London, in addition to the fact that the nationality of the worker is French and his place of residence is in France, so French law applies. Research or factory, the implementation of the objective focus, can protect the worker from adopting another orientation, as it focuses the contractual relationship without the consideration of a single control.

The second requirement

Distinguished Performance Officer

This approach appeared in the application of the law by the Swiss jurist Sniters, as each contract has something that distinguishes it, and that performance constitutes the main function of the contract based on the nature of the contract, so each contract has something that distinguishes it from performance from other contracts.

The distinguished performance of the international instruments related to issues of private international law was indicated by taking into account the circumstances surrounding the contract and explicit presumptions.

And if the first organization of Rome was influenced by French jurisprudence, it led it to subject the contract to the law of the country of habitual residence of the owner of the distinguished performance, in the text of Article (2/4), just as the Private International Law Group referred to this distinguished performance in the text of Article (17), where it says: “ 1- In the absence of a choice of law, the contract is governed by the law of the country with which it has the most reliable ties, 2- Those ties are considered to exist with the country in which the normal residence of the party who must provide the distinguished performance...” .

This is that the nature of the contract is different from one contract to another, and that the idea of this officer is based on the (main performance) in the contract, and on this nature regardless of the regional link of the contract, and then since the essential obligation in the contract enables its parties to know the law chosen by the judge Because the obligation varies from contract to contract.

Where this control appeared as a result of the presence of deficiencies in the objective focus, and this theory is based on the pre-attribution of the law based on the subjective nature of the contract, regardless of the contracting conditions and circumstances that are taken into account in the objective focus and the loss of legal security.

And although Rome’s first regulation gave the judge restricted authority to choose the law that he designates, through indicators that it mentioned in its fourth article, where this authority is limited to estimating what is considered a distinguished and prime

performance or not, the mentioned indicators are not binding on him, so the contract for the sale of goods is subject to The law of the country of usual residence of the seller, and the contract for the provision of services is subject to the law of the country of usual residence of the provider of this service and other contracts.

Among the applications of this distinguished performance in modern laws is what was stated in the Tunisian private international law issued on November 27, 1998, in the text of Article (26) thereof, where it says, "The contract is governed by the chosen law," as well as the ruling issued by the Swiss Federal Court on May 11, 1966. Where it ruled that the contract be subject to the law that is linked to the contract with a close bond when remaining silent about the choice of the obligatory law, and the court determined this law to be the law of the residence of the debtor of the distinguished performance in the contract.

The Rome Convention also adopted the distinguished performance in its Article 4, where it states, "The contract is supposed to have the closest connection to the country in which the party who undertakes the distinguished performance is an habitual resident – or the country in which the main center for business management is, if this party is a company, association, or legal person."...".

In addition, the Rome regulation that replaced this agreement indicated that the usual place of residence of the distinguished performer is the one that applies, in its Article (2/4) that was previously mentioned.

In the licensing contract for the exploitation of a patent, and the contract was concluded in France between a French licensee and a British licensee who normally resides in the Netherlands, it is Dutch law that applies as the licensee to exploit owes distinguished performance, and the Netherlands is his usual residence. Where this trend appeared as a reaction to the loss of legal security, as the theory of distinguished performance is based on prior and objective attribution of contracts, based on the subjective nature of the contract regardless of the contract's circumstances and circumstances, which are taken into account in the objective focus .

One of the advantages of applying this theory is knowledge of the applicable law, and then legal security is achieved, as we mentioned, as the specific law is known by its parties, in addition to unifying the attribution of contracts of the same category, and then it is easy to reach and apply it, and it also contributes to maintaining the expectations of the parties. Legitimate and stable business relations.

As for the negative aspects of this rule, the idea of a distinguished commitment to a work is not clear enough so that its demarcation boundaries can be drawn, because it depends for the most part on the circumstances, and in this case, we have no way but to refer to the nature of the contract, even Such a distinguished commitment can be endorsed by L.L. ((

In some contracts, as in consumption contracts, its application leads to depriving the consumer of the protection provided to him by his place of residence, as it prevails in the interest of the stronger party, as in consumption contracts, where the attribution is to the law of the strong party in the contract as the debtor of the distinguished performance. Also, there is difficulty in determining Distinguished performance in contracts with opposite obligations , and this contradicts what was stated in Article (6/2) of the Rome regulation regarding the protectors of the weaker party.

In addition, the legislator in some international contracts regulates them with peremptory texts and protective rules that may not be violated, due to their special nature, with which it is not appropriate for them to be subject to the law of the place of habitual residence of the distinguished debtor, as in consumer contracts and work contracts.

Therefore, the Rome Convention for the year in its fifth article 1980, in addition to the Rome regulation (1) in Article VI, which was previously referred to, each of them

indicated that the applicable law is the law of the consumer's usual residence, as it provides legal security in addition to its protection for the consumer.

The Rome Convention of 1980 and the regulation that replaced it do not differ in terms of the need for consumer protection. With the direction of those who replaced it from the 2008 regulation with regard to consumer protection.

Also, Article (2/6) of the agreement indicated the possibility of applying the law of the country that is linked to closer ties, if the circumstances revealed this link and close relationship, and then the specific law is not considered.

The Rome regulation indicated in its article (4/8) the existence of an exception to voluntary submission to the law, as it took into account the closer ties that showed this on the approach of the agreement, and indicated the exception to the rule of submission to the chosen law, considering the narrow ties that are more practical.

Moreover, France is a signatory to the agreement and the regulation that replaced it, so France applies the same thing.

As for the proposed criteria for determining distinguished performance, jurisprudence suggested adopting the economic criterion, in which the source of financing mental work, whatever its type, is taken into account, and in the hypothesis of a contract for the exploitation of mental work between one or more natural persons, especially the publishing or representation contract., or the purchase contract, the exploiter only intervenes later on the creative work, which is considered to owe a basic or substantial obligation, and in the hypothesis of the work exploitation contract, which was devised by one or more natural persons with the idea of external capitals, as in the audio production contract And Basri, the author, who abandoned the work is considered as the debtor of this contractual obligation.

However, the artificial nature of such a distinction has been criticized for its difficulty in making such a distinction.

Also, there are those who believe that the consideration of the distinguished obligation is inherent to the assignee, or the beneficiary of the license, when the latter is committed to exploiting the mental work, as well as inherent to the owner of the right, in the absence of this obligation. That the exploiter must be committed to organizing his activity and applying the law, knowing that he can turn against himself, and this approach was taken by the jurist Desbois, but the distinction between the commitment of the licensee and the licensee is difficult to determine. ((

And because these standards are difficult to implement, which led to the disregard for a general standard that determines this performance, and then the solution lies in relying on the specificity of the contracts concerned, based on Article (4/4) of the first Rome regulation, which indicated that when the applicable law is determined On the basis of paragraphs (1 and 2) of this text, "the contract is subject to the law of the country, with which it has narrow ties." Despite this, this return to the principle of neighborhood includes the risk of unpredictability, which the organization aims to confront and eliminate .

often see in the scope of contracts related to intellectual property that the application of this control can be in the interest of the weaker party often, whether it is an author or an inventor, a worker or an employee, and there is no difficulty in determining the commitment to distinguished performance for the employee, the inventor or the worker, as well as in Licensing contracts and others by looking at each contract separately. Also, the application of the DPA can deprive the weaker party of protection as it is not specified and varies from one contract to another.

When reading the texts of the Rome Convention, we did not find a treatment for the loss of protection, except by referring to the previous article, which refers to the absence of

voluntary choice, but it did not refer to the case if the choice leads to distinguished performance, in violation of what is prescribed in terms of protection for the weaker party, when the weaker party is deprived Of this protection, as the text of Article (6/2) of the Rome Statute referred to consumer protection and not depriving him of the protection prescribed for him.

In addition, the text of Article (1/8) of the first Rome regulation indicated that the choice of the parties is associated with not depriving the worker of the prescribed protection, even if the departure from this matter is an agreement, and that the choice that is made by the parties, according to paragraphs (2, 3, 4) From this article, these legislative provisions are also applied in the literary intellectual property law .

The Egyptian Civil Code gave jurisdiction to the Egyptian law in all cases, according to Article (87/2) of the new Trade Law and excluded the application of Article (19/1).

As for the Iraqi civil law, and in view of Article (25) the judge's selection of a number of laws is restricted, according to the following mechanism mentioned, and in the order where in the event that there is no voluntary choice despite taking it with an objective focus, where the judge applies the law of the common domicile of the contracting parties, and if that is not the case, the law of the place of conclusion is applied, And all this is associated with the absence of voluntary choice in the first place.

However, Article (30) of the Iraqi Civil Code showed the possibility of the Iraqi judiciary adopting the distinguished performance, in the event that there is no text dealing with the conflict of laws, so it applies the most common principles of international law.

Hence, the Egyptian and Iraqi civil law adopted a rigid attribution, while the German private international law of 1986 , as well as the Swiss law, adopted a distinguished performance, by dividing the attribution, taking into account the nature of the contract and subjecting each contract to its appropriate attribution.

The American Law Institute's principles of conflict of laws in intellectual property also gave the parties the possibility to choose the law applicable to their contract, as stated in Article (3/501) of the principles on the freedom to choose the law applicable to contracts, and it states in the first paragraph of it that: " The assignment, exploitation licenses and contracts relating to intellectual property right shall be governed by the law chosen by the parties.The choice shall be expressed and evidenced by rational certainty by reference to the terms of the contract or by the conduct of the parties, given the circumstances of the contract.When the parties agree to grant jurisdiction to a state In order to consider and resolve disputes arising, or about to arise, and then, they can choose the law of this country. The parties can also choose the law applicable to the contract or only part of the contract", as these principles recognized the freedom of explicit and implicit choice of law in the scope of contracts Intellectual property, as it enabled the parties to partially choose the law that can be applied to a part of the contract, and then the possibility of multiple applicable laws, which contributes to the flexibility of choosing the officer who refers to the applicable law.

Relying on this article indicates that there is a possibility for the contract to be subject to more than one law, and this contradicts the objective focus control.

We support the position of the Swiss private international law issued in 1987, and the German private international law issued in 1986, and therefore the possibility of each contract being subject to what is compatible with it, away from the rigid attribution, and we rely on Article (3/501) One of the principles of the American conflict, which, if you take into account the submission of the contract, according to the appropriate attribution rules, each contract according to its nature, as the successive intellectual development, in addition to the development of electronic means of communication, and the flourishing of intellectual and commodity exchanges, is only compatible with a flexible and not a rigid attribution, And each contract according to the appropriate controls.

And in order to avoid falling into a conflict of laws, with regard to the contracts under study, we are with the inclusion of a condition for the subsequent choice of law in the contract, when the parties to the contract fail to choose the applicable law, during the time of concluding the contract, in this case they can reserve the freedom to choose the law later, for the same reasons, which justifies giving them the same freedom of choice during the time of conclusion of the contract.

And if this is only rarely achieved, then from the moment when the question is raised, there is a difference between the parties to the contract, and from a general perspective, that prevents them from agreeing on the applicable law, and the dispute between the parties to the contract is then subject to the imposed law outside the management of the will of the parties, even if It is the case that in this case the imposition of the implicit choice of this subsequent law is applied to the conclusion of the contract, and where the parties to the contract did not reach an agreement regarding the choice of the law applicable to the contract, the general direction for resolving the conflict of laws leads to the application of the law, to which the contract is linked by links cramped. The principle of the conflict rule itself means the singularity of the predetermined link, which in all cases represents an important element.

Where there is a condition in these contracts in a stereotyped manner, as for the possibility of subsequent designation of the law based on the freedom granted to the parties, and this can be subject to the discretion of the judge's authority in order to ensure that no harm is caused to the weaker party, through his assessment of the chosen law, can it achieve the interest of this party, And when this condition is not available, the law closest to the contract shall be applied. As the subsequent designation enables the parties to avoid ambiguity in the competition of laws, the law can be appointed initially or later.

We are with the extension of contractual freedom to various contracts, including contracts related to intellectual property, especially in light of the current era, as it is not possible to familiarize yourself with other laws, it can be difficult, and it is possible to develop standard contracts related to contracts related to intellectual property that include specifying the voluntary choice of individuals, whether appointment Coinciding with the conclusion or subsequent to it, and we rely on what Professor Jean-Yves Carlet sees in his lengthy horrific law of will and personal status, as the law of will extends in application to the contractual areas, and in this case, private international law in Germany has made room for the law of will in circumstances Personal.

And in the Islamic Personal Status Law, and in particular, in Article (31) of the Moroccan Personal Status Codification, it states that it is not permissible to conclude a marriage contract for the second wife, meaning that polygamy is prohibited by contract . It is a matter of priority to give contractual freedom to the parties in contracts related to intellectual property, whether it is an invention contract, authorship, publishing or other contracts, due to their importance at the present time and the necessity of contracting in order not to waste these intellectual efforts by ensuring that the right is exploited, and that it is not parked without showing it to the outside world., in order to enjoy the protection prescribed for him in accordance with the agreements, in addition to what these rights contribute to the prosperity and development of societies.

Conclusion

The meaning of the existence of the contract is its implementation, and that the implementation of the contract requires means of protection, and therefore there must be a law that is established for this purpose, when there is competition in the laws that give themselves the right to apply, and then we resort, in the absence of choice, to assigning the contract to controls, whether they are traditional or rigid. Flexible modern.

At the end of this study, we can prove the most important findings and proposals we have reached as follows:

First: Results:

1. Intellectual property contracts have qualitative characteristics, and they branch out into contracts of a special nature, the attribution of which requires consideration of the circumstances and circumstances of the contract.

2. The judge has a discretionary power to determine the law to be applied, in the absence of voluntary choice, and this power is not imagined except in the case of flexible attribution, and despite the power granted to the judge to estimate the closest bond, in addition to what is considered a distinguished performance, it is an authority that is restricted by indicators, including the regulation of Rome in its fourth article.

3. It is not possible to establish a specific control on which all contracts related to intellectual property are based to assign the contractual relationship to a legal system because each contract differs from others in terms of its nature.

4. The importance of the enforcement officer in contracts related to intellectual property.

Second: Proposals:

After what was previously researched, we came up with a number of suggestions:

1- Taking into account the interest of the weaker party in the relationship, even if the application of the law is based on the agreement of the parties.

2- Giving the judge greater authority due to the multiplicity of contracts and their renewal in order to estimate the contractual balance in the relationship. On this basis, the law to be applied is determined. We see the possibility of considering the execution officer as a major officer in the contracts related to intellectual property.

3- Work to develop standard contracts through which the applicable law is determined and is conditional on achieving the interest of the worker, and that there are foundations for contracting between the parties based on a balance between the interests of both parties without giving priority to one over the other.

4- Encouraging, through international conferences, the establishment of an agreement between countries, whether at the level of the Arab world or the world, if possible, in order to unify the rules of the substantive focus of contracts related to intellectual property.

5- The execution officer is of great importance in various contracts, especially contracts related to intellectual property, as in contracts for the exploitation of patents, authorships, or the inventions of the worker or employee. Contracts related to intellectual property, if not all of them can be compatible with this control, then it is not impossible to define it, and these contracts focus on exploiting the right or finding a right, so this control can have its important place and be included as a fixed attribution officer in contracts related to intellectual property. It often represents close ties to the contract.

6- In order to avoid conflict, it is possible to rely on the Rome Convention in its article (2/3), and set it as a prerequisite in standard contracts related to intellectual property, when it approved the subsequent choice of law, so contractual freedom must be embodied to serve the parties, and not disrupt their interests, whether the choice is simultaneous. With the conclusion or subsequent to it, and then it is a text dedicated to contracts without the need to refer to the agreement.

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