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CONFLICT AVOIDANCE THROUGH CHOICE OF LAW AND FORUM

BY COURTLAND H. PETERSON*

A lawyer, when involved in the drafting of an international contract for a client, may, in general, adopt one of two approaches. He may, as is the custom of civil law lawyers, identify the law which is to govern the contract, or specific provisions thereof, by incorporating by reference an identifiable legal system. Or, if inclined to use the second approach as are many common law lawyers, he may attempt to foresee any problems which might arise and deal with them through precise provisions. Professor Peterson discusses the two approaches, the rationale that perpetuates them, and the advantages and disadvantages of each. Although each contract must be treated individually, Professor Peterson suggests that every contract should include provisions specifying choice of law and forum. Such provisions can at least minimize the uncertainty which is necessarily involved in a contractual situation involving more than a single legal system.

IT is fundamental that basic terms in the formation of a contract — price, quantity and quality, timing of delivery or other performance — are almost entirely economic decisions for the client to make. The function of the lawyer with regard to drafting such terms is therefore not so much to advise about their desirability as it is to express them clearly and unambiguously in the contract documents. Given an approximate equality of negotiating ability on each side of the contract, such basic terms will reflect with fair accuracy both market value and other bargaining strengths of the parties.

The role of the lawyer is clearly larger with respect to those supplementary provisions of the contract which deal with the implementation of performance, interpretation, modification, termination and enforcement. As to these matters he must advise on the wisdom of inclusion as well as perform the mechanics of drafting. Moreover, since these provisions present legal issues, they presuppose the applicability of a legal system against which they can be evaluated. When several legal systems are potentially applicable, either alternatively or cumulatively, the drafting problems are obviously magnified. This is especially true where the systems in question are those of different countries, with different legal traditions and institutions.

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In such cases the systems serving as the regulative background for evaluation and enforcement may vary widely, not only as to specific rules but also as to the broader principles of propriety and public policy.¹ The purpose of the present article is to review some of the important factors which bear on these magnified problems, to alert the reader to some of the dangers of reliance on oversimplified answers to highly complex questions, and to suggest a common sense approach to drafting for the international transaction.

It should be noted at the outset that the contract provisions referred to above as supplementary are, except for highly onerous clauses, less clearly affected by market and bargaining strength than are the basic contract terms. The consequence of this fact is that more latitude is usually available for differences in the approach to drafting. The lawyer therefore has greater freedom to express his experience, prejudices and legal risk-taking propensities. This somewhat mixed blessing is reflected in the great variation of drafting philosophy between practitioners.

To the extent that generalization about drafting philosophy is possible, however, there are two schools of thought on the subject. One of these, which may be called the incorporation-by-reference school, attempts to solve the problem of the applicable law by the relatively simple adoption of an identified legal system as a matter of contract, or by the adoption of one system to govern one defined aspect of the agreement and one or more other systems to govern other aspects. Such a provision may or may not be coupled with a contractual choice of forum. This incorporation view, which is usually favored by lawyers with training or experience in the civil law countries, results in rather simple, straight-forward documents with a minimum of detail beyond the basic terms.²

The second approach, which may be called the legislative or codification view, attempts to foresee as fully as possible the problems which may arise under the particular agreement and to deal with them by fairly precise provisions in the contract itself. This approach obviously tends in the direction of highly complex docu-

¹ Diversity of legal rules is, of course, an interstate as well as an international phenomenon, but substantial homogeneity of legal traditions, the growth of common American theories about conflict of laws, and the wide adoption of the Uniform Commercial Code have all tended to dampen the effects of diversity in the interstate sphere. Such ameliorating influences have as yet had much less impact on international transactions.

² See Lalive, *Negotiations with American Lawyers — A Foreign Lawyer's View*, in SYMPOSIUM ON NEGOTIATING AND DRAFTING INTERNATIONAL COMMERCIAL CONTRACTS, 1965, at 1, 8-18 (Southwestern Legal Foundation 1966). There are, of course, some European contracts which are traditionally detailed, but these are the exception rather than the rule. Van Hecke, *A Civilian Looks at the Common-Law Lawyer*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 5, 9-10 (1962).

ments. It is the view most often favored by lawyers with common law backgrounds.³

The broad subject of arbitration is beyond the scope of the present inquiry, but before taking a closer look at these two drafting approaches it should be noted that the increasing use of arbitration in international contracts cases has an impact on drafting philosophy. The rules and procedures under which arbitrators decide cases vary widely, of course, depending on the terms of submission. But even where the contract contains a choice of law clause, and especially when it does not, arbitrators frequently feel greater latitude than courts in the search for applicable legal rules. In some cases, as for example where the arbitrator is designated an *amiable compositeur*, almost complete discretion is left to the arbitrator. Since most arbitrators do feel bound, however, to follow express provisions as the "law of the contract" whatever else may appear in the terms of submission, contracts containing arbitration clauses are rather uniformly ones in which the legislative or codification approach is most satisfactory.⁴

Several factors may be suggested to explain the preference of civil law lawyers for incorporation and the inclination of common law lawyers toward more detailed drafting. The lawyer in a civil law country is, of course, accustomed to working with detailed codes. Whether such codes really do contribute to greater certainty in the judicial process is debatable, but the civil law lawyer does argue with some justification that the individual draftsman of a contract cannot be expected to supply the same degree of foresight or detail as has gone into the drafting of the code.⁵ The conclusion then follows logically enough that the contract draftsman should content himself with detailed drafting only in those areas where the specific transaction requires adaptation; beyond that he should simply refer to an appropriate legal system. This conclusion is reinforced by the rather uniform willingness of courts in civil law countries to permit party autonomy in such matters. Especially in the European coun-

³ Van Hecke, *supra* note 2, at 10-11; Brudno, *Negotiations with Foreign Lawyers — An American Lawyer's View*, in SYMPOSIUM ON NEGOTIATING AND DRAFTING INTERNATIONAL COMMERCIAL CONTRACTS, 1965, at 23-39 (Southwestern Legal Foundation 1966).

⁴ Cf. Mezger, *The Arbitrator and Private International Law*, in INTERNATIONAL TRADE ARBITRATION 229, 231 (M. Domke ed. 1958). See also Lagergren, *The Limits of Party Autonomy II*, in THE SOURCES OF LAW IN INTERNATIONAL TRADE 201 (C. Schmitthof ed. 1964).

⁵ Cf. Lalive, *supra* note 2, at 9. Lalive's interesting discussion suggests, however, that these differences in attitude are quite complex, involving historical and psychological influences as well. *Id.* at 8-18.

tries, civil law courts not only enforce the parties' choice of law but also regularly defer without objection to the parties' stipulation of a particular forum.⁶

The common law lawyer, on the other hand, is haunted by the famous pronouncement of Learned Hand in *E. Gerli & Co. v. Cunard S. S. Co.*⁷ In that case a bill of lading, delivered in Italy and covering a shipment from Milan to New York via Southampton, contained both a limitation of the carrier's liability and a stipulation that the contract was to be "governed by English law." The limitation of liability was probably invalid under the British Carriage of Goods Act, but Hand, holding the limitation clause valid in the absence of proof by libellant that it was invalid under Italian law, declared:

People cannot by agreement substitute the law of another place; they may of course incorporate any provisions 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, and to try to make it one is to pull on one's bootstraps. Some law must impose the obligation, and the parties have nothing whatever to do with that; no more than with whether their acts are torts or crimes.⁸

The case law,⁹ scholarly opinion¹⁰ and even statutes¹¹ have since ameliorated the effects of this devastating attack on party autonomy

⁶ See Van Hecke, *Choice-of-Law Provisions in European Contracts*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 44-53 (1962). There are, of course, exceptions for particular types of matters, such as domestic relations, real property, bankruptcy, etc., but the exceptions are not the same in all countries. Uniformity of exception as well as of recognition of party autonomy was encouraged by the adoption in 1963 of a Draft Convention on the General Jurisdiction of Contractual Forums by the Hague Conference on Private International Law. The text of this Draft Convention is reprinted in 13 AM. J. COMP. L. 160 (1964). A comparison of the recognition of forum contracts in the United States and British Commonwealth jurisdictions with each other and with the provisions of the Draft Convention can be found in Cowen & Da Costa, *The Contractual Forum — A Comparative Study*, 43 CAN. B. REV. 453 (1965). For the situation in Latin America see Folsom, *Choice-of-Law Provisions in Latin American Contracts*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 54-63 (1962).

⁷ 48 F.2d 115 (2d Cir. 1931).

⁸ *Id.* at 117.

⁹ One of the leading American cases is *Siegelman v. Cunard White Star Ltd.*, 221 F.2d 189 (2d Cir. 1955), which makes an interesting comparison with *Gerli* because it also involved Cunard as defendant and was decided by the same court. See also Maw, *Conflict Avoidance in International Contracts*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 23-35 (1962).

¹⁰ See A. EHRENZWEIG, *CONFLICT OF LAWS* 467-68 (1962); H. GOODRICH, *CONFLICT OF LAWS* 202-03 (4th ed. Scoles 1964); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 332a (Tent. Draft No. 6, 1960); A. VON MEHREN & D. TRAUTMAN, *THE LAW OF MULTISTATE PROBLEMS — CASES AND MATERIALS ON CONFLICT OF LAWS* 246-50 (1965).

¹¹ UNIFORM COMMERCIAL CODE § 1-105.

by one of our most distinguished jurists, but the enforceability of choice of law clauses is even yet a matter of some doubt in American law.¹² Of course the power to select a forum often exerts a strong though indirect influence on the law actually to be applied to a transaction. And it now appears clear that contractual consent to the jurisdiction of a particular court, if coupled with actual notice, satisfies the demands of the due process clause even if the agreement is an adhesion contract.¹³ But whether the parties can confer exclusive jurisdiction on a designated forum by contract is a matter of even greater uncertainty than their power to choose an applicable law.¹⁴ Small wonder that the American lawyer takes Hand's advice: If you want to be sure that a particular rule is applicable, express it specifically in the contract.

One anomaly resulting from the dubious enforceability of choice-of-exclusive-forum clauses in American law is that in some cases the preferences of civil and common law lawyers involved ought to be reversed. Suppose, for example, a contract is made in New York between American and German parties which designates German law as applicable and German courts as exclusively competent to adjudicate. The New York courts (or other United States courts) are much more likely to ignore these provisions than a German court would be if the designation were New York law and an

¹² Even *Siegelman v. Cunard White Star Ltd.*, 221 F.2d 189 (2d Cir. 1955), discussed in note 9 *supra*, expressed some doubt as to the parties' ability to stipulate the law governing the validity of their contract, although affirming their power to designate the law governing interpretation. 221 F.2d at 195. The RESTATEMENT (SECOND), *supra* note 10, takes a broader view but also imposes restrictions. For an interesting article discussing the attitudes of various United States courts toward party autonomy and the relevant considerations that affect such attitudes, see Johnston, *Party Autonomy in Contracts Specifying Foreign Law*, 7 WM. & MARY L. REV. 37 (1966).

¹³ *National Equipment Rental Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964) (case involving internal as opposed to international conflict of laws question).

¹⁴ In 1955 the Second Circuit Court of Appeals upheld an advance agreement on forum, deferring to the foreign jurisdiction where this was "reasonable." *Wm. H. Muller & Co. v. Swedish American Line Ltd.*, 224 F.2d 806 (2d Cir. 1955). Three years later the Fifth Circuit declined to enforce a choice of forum clause on the ground that such agreements to oust the jurisdiction of courts are contrary to public policy. *Carbon Black Export, Inc. v. S.S. Monrosa*, 254 F.2d 297 (5th Cir. 1958). The Supreme Court denied certiorari in *Muller*, 350 U.S. 903 (1955). In *Carbon Black certiorari* was granted but later dismissed as improvidently granted, on the (questionable) theory that no conflict between circuits was presented, since *Muller* involved an in personam and *Carbon Black* an in rem proceeding. 359 U.S. 180, 183 (1959). Recently, however, the Second Circuit itself, sitting en banc, has resolved the question against enforcement of such clauses by overruling *Muller*. *Indussa Corp. v. S.S. Ranborg*, 377 F.2d 200 (2d Cir. 1967). Since this was done principally on the theory that such clauses are forbidden by § 3(8) of the Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-15), *Indussa* presumably leaves the matter open as to contracts not covered by that Act. See also Lenhoff, *The Parties' Choice of a Forum: "Prorogation Agreements,"* 15 RUTGERS L. REV. 414 (1961).

American forum. Therefore, a German lawyer desiring to obtain the benefit of some specific rule of German law would be better advised to express it in the contract than to simply designate German law as applicable. By the same token the lawyer on the American side of the transaction should have less concern about the applicability of German rules to a potential dispute under an omnibus choice of German law and forum clause than he would have if the drafting were more specific. The rather rare occurrence of this reversal of attitudes, one suspects, is attributable to the fact that lawyers drafting international contracts seldom are able to foresee or investigate the specific advantages or disadvantages which will accrue from the choice of a particular law or forum.

However fair it may be to describe the incorporation and legislative philosophies of drafting as general tendencies, several factors operate to blur the differences in result to which a sharp distinction between them might otherwise lead. One such factor is that the common law lawyer, having drafted more or less exhaustively, is likely to include a choice of law or forum clause in his boilerplate as a backstop to his own limited foresight. An opposing factor is at work on the civil law lawyer; if the transaction involves reference to a common law system, he is likely to indulge in more detailed drafting because of his own uncertainties about what the applicable common law rule may be. Clients, of course, usually favor simplicity in drafting, either through lack of understanding of the legal complexities and risks involved, or else on the more rational ground of a desire to keep the transaction flexible and negotiable. This is offset to some extent by clients' normal suspicion of foreign courts or any foreign law. The net effect of these conflicting pressures is usually a set of contract documents falling somewhere between simple incorporation by reference and very detailed codification, but involving elements of both. The choice of law clause is a very common element. Clauses consenting to jurisdiction or designating exclusively competent forums are less frequently included, but are by no means rare. A separate but related type of clause is frequently used to designate the controlling text, when the contract documents are drafted in more than one language.

There are thus four different types of clauses, with a host of possible variations and combinations. The following are fairly standard examples of these basic types:

- (1) *Choice of law*: This agreement shall be construed in accordance with the laws of [name of state or country] and

the legal relations and obligations of the parties shall be governed by said laws.¹⁵

- (2) *Consent to jurisdiction*: The parties hereby consent to the jurisdiction of the courts of general jurisdiction of [name of state or country] for the resolution of any dispute arising under this agreement.¹⁶
- (3) *Exclusive forum*: The parties agree that the courts of general jurisdiction of [name of state or country] shall have exclusive jurisdiction for the resolution of any dispute arising under this agreement.
- (4) *Controlling text*: This agreement has been drafted in both the [] and the [] languages. Each text shall be valid; nevertheless, in the event of conflict in the interpretation of the obligations of the parties, it is agreed that the [] text shall be controlling.¹⁷

All four of these clauses might well be found in the same contract, in one form or another. If all four did appear in one document then normally — but not necessarily — the first three clauses would name one state or country and the fourth clause would designate the language of that country as controlling. In fact, however, it is rather rare to find all four in the same contract, or even to find all of the first three in one contract drafted in a single language. The important point to be observed is that each of these clauses deals with a related but separate problem of uncertainty in private international law; the problems are separate, but because of the relationship between them the “partial drafting” which deals with

¹⁵ Many lawyers apparently use only the first half of this clause and omit the latter part, either on the theory that the word “construed” includes legal effect as well as interpretation, or on the theory that no stipulation as to law governing validity would be enforced anyway; see note 12 *supra*. But it certainly is not clear that stipulations as to law governing validity are wholly unenforceable, and even less certain that interpretation includes validity by implication. Also, the normal assumption seems to be that the law referred to by a choice of law clause is the local law of the designated state or country. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 332a (Tent. Draft No. 6, 1960). This may be a safe assumption from the American point of view, but there is some danger in assuming that it holds true in other countries. The leading English case on stipulations as to governing law interpreted such a clause as adopting the whole law, including the conflict of laws rules of the designated country. *Vita Food Products, Inc. v. Unus Shipping Co.*, [1939] A.C. 277. (P.C.) (n.s.). *But cf.* *Siegelman v. Cunard White Star Ltd.*, 221 F.2d 189, 194 (2d Cir. 1955).

¹⁶ Such clauses should probably provide for adequate notice by the complaining party, although formal service of process is not usually regarded as necessary under such a clause. Otherwise the provision may run afoul of due process standards, and this might be true even if actual notice were given. *Compare* *National Equipment Rental Ltd. v. Szukhent*, 375 U.S. 311 (1964), *with* *Wuchter v. Pizzuti*, 276 U.S. 13 (1928).

¹⁷ See generally on such clauses de Vries, *Choice of Language in International Contracts*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 14-22 (1962); Folsom, *Clauses in International Contracts Involving Choice of Law, Language, Forum, and Conflict Avoidance*, in SYMPOSIUM ON NEGOTIATING AND DRAFTING INTERNATIONAL COMMERCIAL CONTRACTS, 1965, at 49-52 (Southwestern Legal Foundation 1966).

some but not all of these problems may give rise to some unexpected results.

Consider, for example, a contract drafted in French and English texts which contains only a choice of law clause designating the law of France as applicable. If a conflict of interpretation arose, would the French text be regarded as controlling? Presumably a French court would say it was, but would an American court do so?¹⁸ Would a French court regard the choice of law clause as consenting to the jurisdiction of the French courts, so as to justify the acquisition of personal jurisdiction without service of process?

Or take the case of a contract consenting to the jurisdiction of a foreign court, but without further provision for the other problems. Does such a consent dispense with the necessity for notice to the defendant, even if it is clear that formal service of process would not be required? Would a foreign judgment rendered without such notice be enforceable in the United States?¹⁹ Would either an American or the foreign court assume that the consent to jurisdiction of the foreign court contained by implication an adoption of that foreign law? To what extent may a consent to jurisdiction, especially if coupled with a choice of law clause looking to the law of the same country, be regarded as a designation of the courts of that country as exclusively competent? To what extent should the designation of a particular forum as exclusively competent be regarded as a choice of law²⁰ or as consenting to jurisdiction of that forum without formal service? To what extent does a controlling text clause imply a selection of forum or a choice of law?²¹

These questions could be multiplied, not only to show the relationship between individual clauses but to demonstrate the varying impact which different combinations of clauses may have. When one adds the complication that the courts of different countries hold a variety of attitudes not only about party autonomy as a single concept but also about different aspects of party autonomy, the possibilities for unforeseen results from "partial drafting" become very complex indeed.

The present writer willingly confesses to preference for the codification or legislative view of drafting — which basically means putting just about everything into an important contract which the drafter can get past opposing counsel and his own client. But it should be emphasized that the problems raised above apply not only to the codifier but also to the incorporator by reference. In fact,

¹⁸ Cf. Folsom, *supra* note 17, at 51.

¹⁹ See note 16 *supra*.

²⁰ See Van Hecke, *supra* note 6, at 46.

²¹ See Folsom, *supra* note 17, at 51.

in many situations they apply with special force to the latter because the balance of the contract affords fewer clues to the resolution of disputes in his case than in that of the codifier. It should also be pointed out that these problems are not avoided by the lawyer who engages in "partial drafting" intentionally, who, typically, includes a choice of law clause but consciously avoids jurisdiction clauses.²² If his intention is to keep the issues of interpretation and enforcement fluid and uncertain, of course, then that is an end to the matter, although one may wonder why in that state of affairs he bothered with a choice of law clause. But if he supposes that his choice of law clause alone either solves the other problems by implication, or that it is somehow exempt from consideration by a tribunal confronted with the jurisdictional issues, then he may be brought to a rude awakening.

The moral to be derived from all of this is a rather obvious one. At least to the extent one can assume the primary purpose of contract drafting is the avoidance of uncertainty, then all of the problems of choice of law and forum should be dealt with expressly. If it is intended that permissible inferences about the resolution of one such problem should not be drawn from express provision for another problem, then that too should be stated expressly. In either case the successful draftsman is normally the one who not only foresaw the possibility of litigation but was also able to forestall it by his advance identification of the rules that were to govern the transaction. Because choice of law and forum comprise not a single problem but a complex of problems, these suggestions therefore also transcend other differences in drafting philosophy.

These comments do not, of course, tell us very much about which law or which forum to choose, and it is doubtful whether that choice ought ever to be made in the abstract. Some lawyers prefer always to designate their own law as applicable and their own courts as forum, and when two such lawyers from different countries face each other across the negotiating table the result is apt to be a test of bargaining strength or no provision for the problems at all. Other lawyers may be inclined to avoid the problem of such a "home team" influence by choosing both a neutral forum and a neutral law, but there is great danger in this choice because many courts, especially in the United States²³ but also in Europe,²⁴ refuse to permit party autonomy in these matters in the absence of

²² There may, of course, be perfectly valid reasons for avoiding choice of forum clauses. See Folsom, *supra* note 17, at 55.

²³ See Yntema, *Autonomy in Choice of Law*, 1 AM. J. COMP. L. 341 (1952). *But cf.* A. EHRENZWEIG, *CONFLICT OF LAWS* 469 (1962).

²⁴ See Lagergren, *supra* note 4, at 214-15.

a "reasonable relation" between the transaction and the forum or law selected.

There is never any really adequate substitute for knowledge of the alternative effects which would be produced by the choice of particular systems or forums. Unfortunately, except for the special knowledge of a foreign system which a draftsman may happen to have, or except as the existence of especially advantageous rules may come to light in the process of negotiation, the obstacles to comprehensive research in the law of a foreign system are simply too great to permit much of this sort of weighing of alternatives.²⁵ There is, however, one rule of thumb that has much to recommend it. If the weighing of alternative effects is not possible, then the principal advantage of choice of law for the international contract is the identification of the rules to be applied, whatever they may prove to be. In the event that a dispute does arise, such a clear identification of applicable rules is most apt to permit negotiation and settlement without litigation. It follows, therefore, that any choice of law or forum should be one likely to be observed and enforced by the courts of both parties. This, of course, is the primary reason for avoiding the choice of neutral law and neutral forum, because the chances are fairly high that such party autonomy will not be permitted and that the benefits of any choice at all are therefore endangered. If the highest obtainable degree of certainty in the selection of applicable law is to be the objective, however, this rule of thumb would go beyond the minimum assurance resulting from selection of a system with a "reasonable relation" to the transaction. It would suggest, in addition, the selection of a system to which the otherwise applicable choice of law rules of the parties' own systems might reasonably be expected to lead.²⁶ This does not mean that choice of law can safely be left to choice of law rules and ignored in drafting, but rather that uncertainties in the application of conflict of law rules can be avoided while at the same time obtaining the most favorable possible climate for the recognition of party autonomy.

The scope of the present article does not permit discussion of a number of other factors which bear upon these problems, such as the desirability of compliance with the formality requirements in all potentially applicable systems,²⁷ the juggling of place of perform-

²⁵ Cf. Brumbaugh, *Choice-of-Law Provisions in Licensing Contracts*, in PARKER SCHOOL SYMPOSIUM ON INTERNATIONAL CONTRACTS 36 (1962).

²⁶ It is interesting to compare this rule of thumb with the suggestion that choice of law should always designate the place of performance. Folsom, *supra* note 17, at 55. The latter rule appears to be more nearly an illustration of the approach suggested here, rather than a departure from it.

²⁷ See Maw, *supra* note 9, at 27-28.

ance or other contacts as a method of influencing the selection of the applicable law,²⁸ or the impact of mandatory rules of law of a forum on the whole complex of autonomy problems.²⁹ Another vital area which must here be left untouched is the potential enforceability of a judgment once obtained, whether it be an American judgment exported for enforcement abroad³⁰ or a foreign judgment presented for enforcement in the United States.³¹ What has been said, however, is perhaps enough to suggest that choice of law and forum clauses, while not foolproof, are useful enough devices to deserve thorough rather than matter of course drafting in the preparation of international contracts.

²⁸ See Maw, *supra* note 9, at 28-30. *But cf.* Folsom, *supra* note 17, at 54.

²⁹ See Battifol, *Public Policy and the Autonomy of the Parties: Interrelations Between Imperative Legislation and the Doctrine of Party Autonomy*, in INSTITUTE ON THE CONFLICT OF LAWS AND INTERNATIONAL CONTRACTS 68-81 (Univ. of Mich. 1949).

³⁰ See Graupner, *Some Recent Aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe*, 12 INT'L & COMP. L.Q. 367 (1963); Kulzer, *Some Aspects of Enforceability of Foreign Judgments: A Comparative Study*, 16 BUFF. L. REV. 84 (1966); Lorenzen, *The Enforcement of American Judgments Abroad*, 29 YALE L.J. 188 (1919); Nadelmann, *French Courts Recognize Foreign Money-Judgments: One Down and More to Go*, 13 AM. J. COMP. L. 72 (1964).

³¹ See Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L.J. 291 (1963); Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783 (1950); Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A.L. REV. 44 (1962). For an exhaustive appendix of the reported cases in this country involving foreign judgments see C. PETERSON, *DIE ANERKENNUNG AUSLAENDISCHER URTEILE IM AMERIKANISCHEN RECHT* 107-27 (1964).