The Law applicable to contractual obligations

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I. General questions
II. Scope of application
III. Main rules
   1. General Rules
   2. Week parties protection
   3. Mandatory rules
Rome Convention


- **Type of Rule and implications**
  - COM (2005) 650
  - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on the law applicable to contractual obligations (Rome I)
    - (Regulation 593/2008)

- **Member States where it is applicable**
Rome Convention

• Purpose of the rule

• Contents
Rome Convention

• Scope of application
  – Material Aspect (Art. 1)
  – Temporal Aspect (Art. 17, 29, 30)
  – Territorial Aspect (Art. 28)
  – Personal Aspect (Art. 2)
Case

- One company with seat in USA and another one with seat in Spain sign a counter trade contract in Barajas airport, Madrid. There is an agreement in favor of the courts of NY. When problems arrive, the Spanish co. decides to file a claim before the Spanish Courts.

Could we apply Rome Convention?

- One company with seat in USA and another one with seat in Canada sign a counter trade contract in Barajas airport, Madrid. There is an agreement in favor of the courts of NY. When problems arrive, the Spanish co. decides to file a claim before the Spanish Courts.

Could we apply Rome Convention?
Case

- Spanish man and French sign a marriage contract. Could we apply Rome Convention?
- One American Co. claims for economic compensation to an English Co. due to losses suffered because of bad working of an industrial equipment sold by the English Co. The file is also claimed against the manufacturer of the equipment, one polish Co. Could we apply Rome Convention?

Those companies had passed a contract of arbitration of the controversies, that one of the parties considers void. In order to determine the validity of this agreement could we apply Rome Convention?
Rules on applicable law

• Ordinary contracts
  – Art. 3
  – Art. 4

• Rules on protection
  – Consumer Contracts
    • Art. 5
  – Labour Contracts
    • Art. 6

Mandatory rules

Art. 7
Rules on applicable law

• Ordinary contracts
  – Art. 3
  – Art. 4

• Rules on protection
  – Consumer Contracts
    • Art. 5
  – Labour Contracts
    • Art. 6

Mandatory rules
Art. 7
Ordinary rules

1. Freedom of Choice

- Close connection
- Residence of the characteristic performer
- Transport contracts
- Inmovable property

2. No choice
Cases

- One contract establishes that it will be governed by French Law.
- Two Companies sign every month a contract on supply of goods and they always include the clause “This contract will be governed by the law of NY. One of those contracts do not include this clause but “This contract will adjust with the general conditions between the parties
Cases

- In an international contract the parties establish that competent courts would be the ones in Luxemburg. What would be the law applicable to the contract?

- In an international contract the plaintiff uses German law to found his arguments and the defendant accepts the legal base and contest using the same the legal system. What would be the law applicable to the contract?

- In an international contract for renting of helicopters the russian lessor and the spanish lesee agree in this clause: Russian Law will not be applicable in this contract. What would be the law applicable to the contract?
Cases

- In an international contract the parties establish this contract will be subject to Algerian into force in 1999, and any subsequent changes will not affect it. What would be the law applicable to the contract?

- A contract of leasing between an mexican and an English Co. is contested as being void. It contains a clause agreeing on the application of USA law. What would be the law applicable to the contract?
Case

- Determine the characteristic performance in those contracts
  - Agency
  - leasing
  - Engineering
  - Hire
  - Counter trade
  - Bank Account
  - Edition
Case

- Contract of sale of fuel between Spanish (Buyer) and Dutch companies signed in Miami

- Swiss Art dealer buys antic statues to Spanish buyers. The offer is made in Switzerland and with Swiss currency.

What could be the law applicable to those contracts?
Case

- One Spanish trader buys carpets in Greece and Turkey in order to be sold in Spain. One Turkish Co, takes contact with him and makes a fax proposal of selling 1000 carpets.

- One Spanish importer of child care products buy the goods in USA and Canada in order to be sold to little shops in Spain. In order to cover its market needs it makes an advertising campaign in Canada looking for sellers of the products. One canadian Co, receives the advertising in Canada and formalice a contract through the internet.

What could be the law applicable to those contracts?
Case

Contract of sale of real state in Mallorca between two north americans living in USA with $ currency.

Contract of counter-trade between Mexican and Spanish Companies. The Spanish delivers TV sets and the Mexican corn produced in Mexico. Both of the obligations must be enforced in Mexico. The contract is signed in Miami and the offer is done in Spain.
Case

- Contract of distribution between Spanish Co. (that wants someone to distribute its products and make a market analysis for it) and a Co. whose seat is in Edinburgh (that makes the work) What would be the law applicable to the contract? Art. 19

- Leasing contract between an Afghan Co. and an Spanish user, being the manufacturer Co. a French one. What would be the law applicable to the contract taking into account that in the Afghan legal system sexual discrimination and even constraint is permitted, personal freedom is limited and do not permit payment of interest rate for monetary obligations.
Rules on applicable law

• Ordinary contracts
  – Art. 3
  – Art. 4

• Rules on protection
  – Consumer Contracts
    • Art. 5
  – Labour Contracts
    • Art. 6

Mandatory rules

Art. 7
Case

- Contract of agency between natural Spanish person and Belgium Company in order to make the distribution of products in France? What would be the law applicable to this contract taking into account the ordinary and Labor protection rules?
Rules on applicable law

• Ordinary contracts
  – Art. 3
  – Art. 4

• Rules on protection
  – Consumer Contracts
    • Art. 5
  – Labour Contracts
    • Art. 6

Mandatory rules
Art. 7
Case

North American multinational Company signs a contract with a little Spanish retailer Company for the promotion and sale of pieces of pottery. The contract will be governed by the NY Law. Some problems arise and the NY asks his general conditions to the contract to be applicable. The Spanish Co. asks for the application of the Ley sobre condiciones generales de la contratación whose art. 3 establishes that this rule will protect Spanish Companies within International Trade even when the contract is governed by a foreign rule if the company has seat in Spain and has issued his agreement in Spain.

What would be the law applicable to this contract?
Case

Spanish Co. signs a contract of sale of Oil with a State owned Libyan Company. There is an agreement that the money will be paid in and by a North American Bank that acts guaranteeing the contract.

The contract is contested before an Spanish Court considering it is a void contract because of the breach of North American Rules prohibiting trade with Libya.

What would be the law applicable to this contract?