

OPTIMAL RULE-SELECTION PRINCIPLES IN ANGLO-AMERICAN CONTRACTUAL JURISDICTION

BY: ALAN REED

ABSTRACT

Dyspeptic individuals and corporate entities are frequently engaged in multistate litigation as a concomitant of the growing body of activity at an international and interstate level. Litigants, like moths to a flame, are increasingly drawn towards the adventitious benefits of suit before a U.S. Court, and have sought to invoke jurisdiction over non-forum residents. As a consequence the court system has striven manfully, but arguably in vain, to propagate effective substantive principles, which are distilled causistically in a commercial arena to identify sufficient nexus between a forum state and defendant, satisfying the constitutional standards of due process. A legitimate blue litmus paper template for this important venue resolution conundrum has been difficult to achieve. Interpretative problems are evident in the assimilation of relevant methodological principles. In this context it is substantive principles relating to personal jurisdiction which operate as the fulcrum for a court entering a binding judgment against an impacted party. A defendant will be haled before an alien court to defend an action as a consequence of state level empowerment, through adoption of long-arm statutes. It is vital, however, that the seized court's exercise of jurisdiction comports with the due process clause of the Fourteenth Amendment to the Constitution, and is efficaciously decided. Jurisdictional propriety must be satisfied, and must not only be achieved, but transparently viewed as such. An unavoidable consequence of this is that, for well over a century, relevant principles have been solipsistically distilled through the almost exclusive judicial aegis of the Supreme Court. An erratic course has been circumnavigated, and on many occasions the Court's opinions seem more the product of under-attention to practical consequences than to "over-attention to grand theory."

TABLE OF CONTENTS

I.	INTRODUCTION	23
II.	SPECIFIC JURISDICTION IN U.S. CONTRACT ACTIONS	37
	a. The Decision in <i>McGee v. International Life Insurance Co.</i>	37
	b. The Single Contact Alone as Minimum Contacts and Ensuing Disarray in the Lower Courts.....	40
III.	PERSONAL JURISDICTION IN U.S. CONTRACT CASES: A PROPOSED BRIGHT LINE RULE	49
	a. The Decision In <i>Burger King</i>	49
	b. The Implications of the Decision in <i>Burger King</i> : Current Orthodoxy in American Contractual Jurisdiction Principles.....	54
IV.	SPECIAL JURISDICTION IN MATTERS RELATING TO CONTRACT PURSUANT TO ARTICLE 5(1) OF THE BRUSSELS CONVENTION	62
	a. Introduction.....	62
	b. Jurisdiction in Matters Relating to a Contract: Article 5(1).....	64
	i. <i>Obligation Performable in a Number of Contracting States</i>	67
	ii. <i>Characteristic Obligation Theory and Attendant Problems</i>	72
	iii. <i>Problems Over Restitutionary Claims and the Flawed Perspective of Contractual Jurisdiction Principles</i>	77
	iv. <i>Accessory Jurisdiction and Division Between Specific and Main Contractual Obligations</i>	85
V.	CONCLUSIONS	88
	a. The Primacy of Actor Sequitur Forum Rei.....	88
	b. Internationalist Solutions to In Personam Jurisdiction.....	93