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MUNICIPAL LAWS AND CHOICE OF LAW CLAUSE IN INTERNATIONAL CONTRACTS

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ABSTRACT

"No written contract is ever complete ;even the most carefully drafted document rests on volumes of assumptions that cannot be explicitly expressed"

International contracts refers to a legally binding agreement between parties ,based in different countries ,in which they are obliged to do or not do certain things .International contracts may be written in a formal way .Most businesses were create contracts in writing to make the terms of agreement clear . A transaction will qualify to be international if elements of more than one country are involved in it and *international contract* law concerns the legal rules relating to cross border agreements.

In the era of globalization where a contract contains one or more foreign elements ,the difficult and complicated question in proceeding that arises is that arises is that of ascertaining its applicable law.Such difficulty stems from the multiplicity and diversity of connecting factors and each of them may arise in different jurisdiction for instance the place where the contract was made ;the place of performance ;the place of business of the parties ;the place of payments; the currency of payment; domicile or nationality of the parties and so on .So to avoid this situation parties are granted with the freedom to select the law to govern their contract under the

provisions of Rome Convention .The inclusion of a choice of law clause is such an everyday matter in international contracts that its absence would be to ignore commercial realities .This shows that there is no requirement that the chosen law has a connection with the transaction. The choice to parties must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case .

"No written contract is ever complete ;even the most carefully drafted document rests on volumes of assumptions that cannot be explicitly expressed "[1]

INTERNATIONAL CONTRACTS

International contracts refers to a legally binding agreement between parties ,based in different countries ,in which they are obliged to do or not do certain things .International contracts may be written in a formal way .Most businesses were create contracts in writing to make the terms of agreement clear ,often clear ,often seeking legal counsel when drawing important contracts . A transaction will qualify to be international if elements of more than one country are involved in it and international contract law concerns the legal rules relating to cross border agreements.

INTERNATIONAL AGREEMENT

Accord, annex, charter, compromise, convention, memorandum of understanding, protocol, treaty, etc., which (as defined by the Vienna Convention On The Law Of Treaties) is an "agreement concluded between states in written form and governed by international laws, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." The title of the agreement is not a determining factor in making distinctions among different arrangements. Although considered binding, international agreements may lapse on expiration, through war or denunciation, or when a fundamental change in circumstances occur? Multilateral agreements are usually open to all nations, plurilateral agreements involve a restricted number of nations, and bilateral agreements are usually private arrangements between two nations.[2]

[1] Arthur Rosett, '' critical reflections on the CISG; ohio state law journal '' 45(1984) :265,287.
[2] http://www.businessdictionary.com/definition/international-agreement.html

INTERNATIONAL COMMERCIAL CONTRACT DEFINITION

International instrument have identified contract as "International" when the parties concluding the agreement come from two or more different states ,[3] The article 1(1) principle on choice of law in international commercial contracts(2015)the "HAGUE PRINCIPLES", article 1(2) .That said more flexible definitions are possible ,such as contracts with significant connections with the more than one state' ,involving a choice between the laws of different states' , or affecting the interest of international trade."[4]

As described in the HAGUE PRINCIPLES, one approach to identifying a contract as "Commercial" may be where "each party is acting in the exercise of its trade or profession ."(HAGUE PRINCIPLES, ARTICLE 1(1).Another approach is found in the CISG, which limits its scope to commercial matters by excluding ,for example ,consumer contracts ,such as those for "goods bought for personal , family or household use"(CISG,ARTICLE 2(a).

Contracts can cover all aspects of international trade ,although the most commonly used are:

- International sale contract.
- International distribution contract.
- International agency contract.
- International sales representative contract.
- International supply contract.
- International manufacturing contract.
- International service contract.
- International strategic contract.
- International joint contract.
- International franchise contract

  In international trade ,the UNIDROIT principles establishes general rules applicable to commercial contracts. They shall applied when the parties have agreed that their contract be governed their contract. In other cases they may be used to interpret or supplement domestic law .

[3] United nations convention on contracts for the international sale of goods (Vienna,1980.)(CSIG)
[4] Preamble ,comment 1.UNIDROIT PRINCIPLES 2010

UNIDROIT

The institute for the unification of private law is an international governmental organization head quartered in Rome whose tasks are to study needs and methods for modernizing ,harmonizing and coordinating private and in particular commercial law as between states and groups of states and to formulate uniform law instruments ,principles and rules to achieve those objectives membership of UNDROIT statute. UNDROIT's 63 member states are drawn from the five continents and represent a variety of different legal ,economic and political systems as well as different cultural back grounds[5].

HISTORICAL FOUNDATIONS AND ORIGINS PRIOR TO MODERNISM

Employing the historical approach to international commercial contracts promptly reveals the fact that long before the rise of national state and legal positivism with respect to the sources of law ,there were rules and institutions which basically did not emanence from a sovereign and these rules governed commercial inter courses more or less until the national codifications.

Those non –national rules governing commercial activities can be traced back to the fourth century B.C.. When the Greeks came to rely upon a transcendental law designed to deal with the "international" transactions. Greeks substantial law approach to economic relations between merchants from different and politically independent city states was aimed to meet the needs of cross-border trade of that time .Thus the Greek law ,applicable to trading between city states was based upon commercial in antiquity.[6]

The Roman's followed the same way of solution with a search for better equipped set of rules and institutions to provide the appropriate environment for trade to thrive given Rome's location at the centre of global trading system of that time .Romans also developed a separate tribunal ,named *Praetor peregrines,* to adjudicate the legal relationship with and between Non –Romans by applying a law of universal scope which was called "IUS GENTIUM." [7]The *ius gentium,* emanating from the legal creativity *of Praetor,* Greek legal

[5] www.globalnegotiator.com/international-trade/dictionary/international-contracts/-visited at 10:06pm on 24/03/17
[6] Borchers.J.B, The Internationalization of contractual conflicts law ,Vanderbilt journal of transnational law, vol.28(1995).at 424
[7] Juenger, F.K.,American conflicts scholarship and the new law merchant, Vanderbilt journal of transnational law vol ,28(1995) at 490

doctrines and the nation good faith ,was therefore ,more flexible and functional than the *ius civile* that governed relations between Roman citizens.

In the eleventh century ,Europe managed to cope with the chaotic legal and social environment of Dark Ages and experienced "the first western renaissance" during the following two centuries in which the separation of the state and the church and rediscovery of Roman law brought about the emergence of law both as a profession and a subject of study in newly developed universities .Thus ,common law in England and *ius commune* of the continental Europe ,a supranational law based on Roman Law that became a continental Europe law ,started to evolve in this period with the concurrent upswing in trade ,free merchant, formed communities ,called "elder mercantile guilds", in order to travel together in safety with the intention of benefiting from the revival of commercial activities .in addition to security ,guilds provided their numbers with the possibility of making transactions other than owe concluded and performed by parties present simultaneously which had become the regular practice during Dark Ages; and new "non-simultaneous transactions" paved the way for the development of substantive rules needed to govern these more complex relations .Each guild established some special set of rules which were derived from customs that were common to them and differed from traditional law .These rules were applied to the disputes between members with in the some guild regardless of whether they were at home or abroad, and enforced by the guild itself which the merchant belonged to by means of sanctions ,ranging from a file to the exclusion from the community, in which reputation played a very important role. The authority of the rules were strengthened by occasional privileges or immunities granted by medieval rulers, both feudal and ecclesiastical, which exempted certain related issues from normal jurisdiction .Besides ,medieval rulers never intended to institute substantive rules governing the transactions between merchants, rather ,their interests in luxury items provided and taxes paid by merchants simply limited their intervention in commercial matters to the recognition of merchants freedom of movement and contract or granting of immunities and the privileges and immunities granted to merchants, called *ius mercatorium* ,were considered as a single body of rights and entitlements devoted to the lasiness of commercial activities.

Therefore ,the first study of conflict of laws began as a discipline in upper Italy in the twelfth century when the scholars invented unilateral ,multilateral and substantive approaches in order to find a solution to problems involving connections with more than one

jurisdiction and on urban law .Multilateral approach was the widespread one with regard to the competent court which the guiding principle was *forum contractus* , the place of where a contract is concluded considered as the place of jurisdiction .However ,there were difficulties in the determination of substantive law that would govern the legal relationships since urban laws proved to be inadequate to rule the complicated affairs of cross-border merchandise. In order to provide equitable solutions, these commercial affairs were needed to be regulated by a law of their own, called the law merchant or *lex mercatoria,''* an acknowledged commercial law that was composed of customary law, customs and trade usages .Hence, even though merchants of this period had a variety of means available for settlement of disputes arising from their commercial activities, namely royal courts, ecclesiastical courts and common law courts, the most utilized mechanism was the merchant court where merchants themselves sat as juries and applied *lex mercatorio* thereby provides speed informality, efficiency and justice for settling of disputes .The medieval law merchant managed to form a substantive legal order that was composed of trading practices of merchants and the dictates of equity , and coexisted successfully with other forms of political and legal regulation in such a context where, '' the local political authorities shared authority with other political and religious authorities in a system mediated by customary laws and historic entitlements.[8]''

The latter half of twentieth century has seen a broad expansion in international trade business .This expansion has resulted in a transformation of international business law .The reality of trade liberalization and the rapid expansion of exporting in services and licensing have resulted in the adoption of numerous and relatively recent international connections and supranational responses to reduce barriers to trade .[9]

IMPORTANCE OF CONTRACTS IN INTERNATIONAL TRANSACTIONS

The absence of a contract continues to be a regrettably common state of affaires. Companies, believing them to be protected by a long term commercial relationship based on mutual trust, make no provision for a written statement of each party's obligations.

[8] Culter .A.C. Globalization the rule of law and the modern law merchant :medieval or late capitalist associations ? constellations 8(4)(2001)

[9] Law of international contracting by – Larry A. Dimatto IInd edition 2009 published by Kluber law international . www.kluwerlaw.com

The contract may be incomplete or imprecise ; in the other words ,one or more essential clauses relating to matters such as payment deadlines and methods ,the applicable law or the court of jurisdiction may have been omitted .

Whether there is no contract or an in complete contract ,the consequences can be very serious ,possibly even compromising commercial relations between the parties as well as having significant financial consequences . contracts are essential means of guarantying compliance with obligations and ensuring acceptance of them by both parties.

PRIVATE INTERNATIONAL LAW

National courts must apply the private international laws of their state to determine the applicable law of the contract in case of an international dispute . Private international law, also called conflicts of laws ,consists of legal norms that determine three types of issues:-

I. Which state court has jurisdiction in private matters having cross-border implications ,
II. Which state law is applicable in such matters and
III. Under which conditions may a foreign decision be recognized and enforced in another country .

Each state has its own private international law system .a global civil code does not exist

THE ROLE OF GOVERNING LAW

- The governing law operates as a "Gap Filler": legal issues arising out of a contractual relationship that are not addressed by the contract must be resolved by the governing law.
- As a consequence, the governing law becomes less important once the parties have extensively dealt with duties ,rights and possible legal consequences in case of any breach .
- The more the contract is complete, the less governing law is important.
- Governing law will, in the absence of contractual provisions determine :

  -The scope contractual obligations

  -The applicable remedies in case of a contract breach

  -The extent and duration of liability of the parties in case of breach.

HARMONIZATION OF INTERNATIONAL LAW

However, different laws have been harmonized on the international level:

On the European level from 18Dec 2009 onwards, private international law is harmonized also in relation to (international) contractual relationships. Every court residing with in the EU must apply the ROME I regulation.

Parties of an international commercial contract can in principle freely choose the governing law including the choice of law that is not linked the contract .[10]

INTERNATIONAL LAW &CONTRACTS

THE LEGAL DIMENSION OF INTERNATIONAL TRADE

Laws covering trade between businesses in different countries have existed since the law merchant was born in the medieval period. As business has grown across national borders and business relations have deepened, the legal dimension of business has had to follow suit .All commercial transactions across borders exist within the frame work of national legal system.

Law expands into almost all aspects of business and can constrain business activities but also enable them and acts to protect workers rights ,consumer protection and ,more recently ,data protection.

Law can be classified into two categories:

- Public law ,concerning relations between citizens and state
- Civil law, concerning relations between individuals or companies

Governments have slowly realized their limitations for regulating international transactions, notably in the case of e-commerce which has for outpaced the development of law needed to cover it .Globalization has led to working of the all powerful state as well as introduction of a new body of international law[11].

RECOGNISED PRINCIPLES OF INTERNATIONAL COMMERCIAL LAW

Sources of international commercial law –

- ✓ Customary International business law, International chamber of commerce uniform customs and practices for documentary credits addressing letters of credit.
- ✓ International Commercial Arbitration decisions ,arbitration decisions are based on the application of international commercial law
- ✓ Conventions and treaties , United Nations Convention on the International sales of goods which has been incorporated into the national law of many nations .

LAW OF JURISDICTION

In a typical legal dispute arising from an international trade ,it is foreseeable than an issue in the realm of private international law might arise .the main question are:

[10] www.google.com date of visit 12/04/17 at 8:40 pm
[11] www.internationaltrade.co.uk./articlesprint.php?CID=&SCID=&AID+30date of visit 24/03/17 at 11:12pm

1. Which country's courts should have jurisdiction to try dispute
2. Which country's laws should be applied to resolve the dispute
3. Whether any foreign judgment obtained abroad might be enforceable in the home

CONFLICT OF LAW

Conflicts of laws is a set of rules aiming to provide national courts with the instruments to decide a case containing foreign elements .it is concerned with civil and commercial law rather than criminal or administrative matters .These laws can be divided into three areas:

1. The jurisdiction of a court ,its competence to hear and decide a case .
2. The law governing a relationship ,the rules applicable for deciding a case .
3. The recognition and enforcement of judgments rendered by foreign courts .

Contract law deals with ,among other things, the formation and keeping of promises . A promise is an assertion that something either will or will not happen in the future.

Like other types of law ,contract law reflects our social values ,interests and expectations at a given point of time .It shows for example ,what kinds of promises our society thinks should be legally binding .It distinguishes between promises that create only moral obligations (such as a promise to take a friend to lunch)and promises that are legally binding (such as a promise to pay for merchandise purchased).Contract law also demonstrates what excuses our society accepts for breaking certain types of promises . In addition ,it shows what promises are considered to be contrary to public policy against the interests of society as whole and therefore legally invalid .When the person making a promise is a child or is mentally incompetent ,for example ,a question will arise as to whether the promise should be enforced .resolving such question is the essence of contract law.

THE FUNCTION OF CONTRACTS

No aspects of modern life are entirely free from contractual relationships. You acquire rights and obligations, for example, when you borrow funds, when you buy or lease a house, when you obtain insurance, when you form a business, and when you purchased goods or services. Contract law is designed to provide stability and predictability for both buyers and sellers in the marketplace.

Contracts law assures the parties to private agreements that the promises they make will be enforceable. Clearly, many promises are kept because the parties involved feel a moral obligation to do so or because keeping a promise is in their mutual self interest .The

promiser and the promise may decide to honor their agreement for other reasons.Nevertheless, the rules of contract law are often followed in business agreements to avoid potential problems[12].

THE HISTORY OF THE CONCEPT OF AUTONOMY IN CONTRACT

THE ANTECEDENTS OF AUTONOMY

Any discussion of the history of choice of law in contract must start at the beginnings of private international law in the middle ages. The first attempt to delimit the ambit of conflicting statutes amongst the city states and small principalities of that era was made in northern Italy in the 13&14th centuries . The question was who had authority over whom and what .Two principles of allegiance competed with each other :the principle of other personal allegiance of the early middle ages and the principle of territoriality more fitting to the control of the feudal lord over property with in his domain .

The statues of whom Bartolus (1314-1347) was the most prominent , defined the ambit of a local law by analysis of the nature of the law concerned .Following the traditional division of Roman law , a distinction was drawn between those laws which concerned things ,and those ,which were of a mixed character concerning both persons and things ,including acts such as the making of a contract. The ambit of a statute depended upon the category into which it fell .If it was personal ,the law bound all those who were citizens of the enacting state where ever they might be.If the statute concerned things ,its scope was limited to things situated with in the territory of the legislating state .If it concerned acts ,the statute extended to those who performed those acts within the territory of enacting sate .Hence the first rule applicable to choice of law in contract was *locus right actum .*

The principle was simple to apply if the formation and performance of the contract took place in the same state .But what if those place differed ?which should prevail :the place of contracting or the place of performance? Bartolus split the applicable law between them :any injury arising out of the contract directly was to be governed by the law of the place of contracting ;any injury arising out of its mal or non –performance was to be determined by the law of the place where the contract was performed .At this stage there was no concern with the subjective intention of the parties since the focus was on the authority of the local ruler .But foreigners who traded in a particular city presented as problem in the structure devised : they

[12] Cengage advantage books:fundamentals of business law:excerpted cases:- roger le roy miller ,Gaylord.a.jentz-16 jan 2009.at google books visited at 10:51 pm on 01/02/17

owed no allegiance to the local price or ruler,but their own.This was resolved by implying that by acting in a particular place they had submitted to the operation of the local law .

The French jurist Dumoulin (1501-1566)is usually described as the originator of the concept of contractual autonomy .it is true that Dumoulin used language which could be interpreted to mean that the subjective intention of the parties determined the applicable law ,rather than the locus contractus which he described as fortuitous .But a closer analysis shows that he used the implied intention of the parties as a device which would point to the place of performance rather than of contracting .indeed his main concern appear to have been with the marriage contract .He used his theory of the implied intention of the parties to justify the application of the law of the domicile of the husband rather than the place of contracting which would often coincide with the domicile of the wife .This blossomed later into a separate choice of law rule .From a modern point of view the rule that the marriage contract is governed by the law of the husbands domicile because wife is compelled to line there ,is quite the reverse of party autonomy .The place ,however ,where a contract is to be entered into is not to be considered absolutely ; for if the parties had in ,mind the law of another place at the time of contracting the latter will contract [13] .

As one of the worlds fastest growing economics, India's attraction to foreign investor's is tempered only by its sometimes un clear legislation .

In this era of globalization where a contract contains one or more foreign elements ,the difficult and complicated question in proceeding that arises is that arises is that of ascertaining its applicable law.Such difficulty stems from the multiplicity and diversity of connecting factors and each of them may arise in different jurisdiction for instance the place where the contract was made ;the place of performance ;the place of business of the parties ;the place of payments; the currency of payment; domicile or nationality of the parties and so on .So to avoid this situation parties are granted with the freedom to select the law to govern their contract under the provisions of Rome Convention .The inclusion of a choice of law clause is such an everyday matter in international contracts that its absence would be to ignore commercial realities .

PARTY AUTONOMY :- 1980 , Rome Convention on the law applicable to contractual obligations.

[13] Autonomy in international contracts by peter Edward nygh –pub –clarendon press oxford –oxford press -1999

Article 3 of Rome convention.

Freedom of choice

1. A contract shall be governed by the law chosen by the parties .The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case .By their choice the parties can select the law applicable to the whole or apart only of the contracts
2. The parties may at any time agree to subject the contract to other than that which previously government it ,whether as a result of an earlier choice under this article or of other provisions of this convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under article 9 or adversely affect the rights of third parties.
3. The fact that the parties have chosen a foreign law ,whether or not accompanied by the choice of foreign tribunal ,shall not ,where all the other elements relevant to the situation at the time of the choice are connected with one country only ,prejudice the application of the rules of the law at the country which can not be derogated from by contract, hereinafter called "mandatory rules" .
4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of article's 8,9 and 11.

   Article 3 embodies the principles of the "party autonomy", giving the parties freedom to select the law ,which is govern the contract .Although very frequently the chosen law has some connection with the transaction ,it often happens that commercial contracts contain a choice of law, which has no connection ,or no apparent connection ,with the transaction[14]. The Rome Convention allows the choice of law, which has no connection, with the contract. By Article 1(1) of the convention, its rules apply to contractual obligations "In any situation involving a choice between the laws of the countries". And Article3 (1) states that the law chosen by the parties governs a contract. The combined effect of these articles is, however, that parties who are in one country ,and whose transactions is connected only with that country, may choose the law of another country and the courts of contracting state must ,subject to mandatory rules, give effect to that choice .It is apparent from the

[14] Shamil bank of bharain EC v.beximoco pharmaceutical ltd[2004]1WLR1784

Article 3 (3)that the convention contemplates that the choice of a foreign law may be made even if all the relevant elements are connected with one country only.

This shows that there is no requirement that the chosen law has a connection with the transaction. The choice to parties must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case .

EXPRESS CHOICE

A choice of law is express when the contract contains a provision ,which specifies the law ,which it is to governed .Privy council in Vita Food Product Inc V.Unus Shipping Co.Ltd held that the parties were free to select any governing law they wished, irrespective of any connection with the contract ,provided that the choice was bonafide , legal and not contrary to English public policy .Where the parties have identified the applicable law there is no difficulty in giving effect to the choice of the party .But where the parties selects the applicable law indirectly the effectiveness of the alleged choice depends on interpretation of the clause in question[15].

APPLICABLE LAW AND RULES[16]

Conventions:- In some cases **,**the law applicable to a contract will be provided for in a treaty .The United Nations Commission on International Trade Law (UNCITRAL) has created three treaties that provide the applicable rules governing certain contracts.

CISG-The United Nations Convention on Sale of Goods (Vienna, 1980)

VALIDITY OF CHOICE OF LAW AND FORUM SELECTION CLAUSES

It is common practice for foreign companies entering into contracts with Indian companies to stipulate that the agreement be governed by a foreign law and be enforceable in a foreign court.

In recent decision ,the Bombay HC upheld the validity of a contract wherein the parties had expressly agreed that the disputes would be settled under English law in English courts .The court held that , even when the agreement was signed by some of the parties in France ,a country to which none of the parties belonged ,the parties would be governed by the law which they chose under the agreement[17].

In this case , an English company and an Indian company entered into an agreement under which the Indian company had the exclusive right to market and distribute the English Co's products manufactured in India, in India and Sri Lanka.The governing law of the

[15] www.legalserviceindia.com visited on 23/02/17 at 10:54 pm
[16] www.nyulawglobal.org visited on 23/02/17 at 23:00 pm
[17] Rhodia ltd v. Neam laboratories ltd.AIR2002,Bom.502

agreement was English law. The agreement also provided that all disputes between the parties on the interpretation or performance of the agreement would be settled by English courts.

Thereafter , certain disputes arose with respect to the distribution arrangement and Indian company filed suit in an Indian trial court seeking various reliefs against the English company . The English company field a reply to the Indian company's interim application inter alia stating that the trial court had no territorial jurisdiction to entertain the suit for the reason that the parties to the agreement had agreed by choice to be governed by English law and had submitted themselves to the jurisdiction of English courts alone .The trial court held that as the Indian company's plant was situated within its jurisdiction ,under section 20(c) of the CPC,1908,the suit could be filed in that court.

On appeal, the Bombay HC addressed the following main issues:-

i. Whether contracts with a foreign choice of law clause are valid under Indian law, and whether foreign law can rely upon to assess whether an Indian court has jurisdiction in the matter?
ii. Whether an Indian court has jurisdiction to entertain a suit arising out of an agreement specifying a foreign court as having exclusive jurisdiction ,if the cause of action has arisen in India?

While addressing the foregoing issues ,the court referred to the Indian supreme court's judgement in which it has been held that the expressed intention of the parties is generally decisive in deterring the "proper law of the contract." The only limitation of this rule is that the intention of the parties must be expressed bonafide and should not be opposed to public policy. Proper law is ,thus the law which the parties expressly or impliedly choose or which is imputed to them by reason of its closest and most intimate connection with the contract [18].

In this regard ,the Indian Evidence Act ,1872 provides that if a court does not take judicial notice of a fact ,such fact should be proved[19] as an Indian court will take judicial notice only of laws in force in India ,foreign law must be proved like any fact.[20] Therefore ,if a party wants to rely on foreign law ,it should be pleaded like any other fact and be proved by evidence of experts in that law . The requirement to prove foreign law under rules of evidence has been

[18] National Thermal power Corporation V.Singer company,AIR1993sc998
[19] section 56 of the Indian Evidence Act
[20] section 57 of the Indian Evidence Act.

upheld by the Indian Supreme Court [21],where the court held that it would be able to interpret the agreement's choice of law provisions only if the parties adduced evidence thereof. This ratio forms the basis of the Bombay High Court's in Rhodia case .Further ,the Indian Supreme Court has held that foreign law can be relied upon to assess whether an Indian court has jurisdiction in a particular case.[22]

On the issue of jurisdiction of Indian courts in respect of an agreement specifying a foreign court as having exclusive jurisdiction ,an Indian court has jurisdiction to entertain a suit if the cause of action arises wholly .

[21] Hari shanker jain V.sonia Gandhi ,AIR2001.sc .3689
[22] British india stem navigation co ltd.V.shanmughavilas cashew industries,1990(3)scc 481