

Battle of the Forms and Conflicting Choice of Law Clauses (summary)

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This article examines the 'Battle of the Forms' on conflicting choice of law clauses.

The 'Battle of the Forms' problem arises where a parties put forward their own differing terms during negotiations and not conclusively decide which set of terms applies, nevertheless they still purport to perform their obligation. Battle of the Forms solves the question whether a contract has concluded and if positively, which set of terms governs the contract. After all, the problem belongs to the realm of substantive contract law.

The present academic and legislation practices approve the 'knock-out' approach. However, the usual 'Battle of the Forms' has not considered the question of law applicability if there are conflicting standard forms where both contain conflicting choice of law clauses as it is much more important for the parties to take the contract rather than adhering own choice of clause. Therefore when a dispute occurred, which is the applicable law of the contract is of critical importance for stakeholders given that law on battle of the forms are very different.

This theme is deep-rooted to 'Party Autonomy' in international private law, and have been discussed as a problem of the validity of law choice. Yet Japanese scholars do not have treated the issue as Battle of the Forms. Having stated, this article firstly attempts to arrange an argument of the validity of the choice of law in the conventional private international law, then, provide a solution to the problem by examining how to interpret "the intention of the parties" from the purpose of the party autonomy principles.

Where the issue relates to the existence or validity of the choice of law itself, three possible solutions have been suggested; among them are the *lex fori*; the law which the parties purport to choose like Rome I Regulation art. 10 (1); and No choice solution from the view point of the international private law itself. In the conclusion, the article adopts the last 'No choice of law' option. This solution realizes a settlement in unified standard across various fields of Law, and offers a neutral solution between the parties adopting 'knock-out' approach.