

Contractual Choice of Law in Contracts of Adhesion and Party Autonomy

Mo Zhang (*Temple University*) has posted “**Contractual Choice of Law in Contracts of Adhesion and Party Autonomy**” on SSRN; it originally appeared in the *Akron Law Review*, Vol. 41, 2007.

Contractual choice of Law in contracts of adhesion is an issue that poses great challenge to the conflict of law theory. The issue is also practically important because the increasing use of form contracts in the traditional “paper world”, and particularly in the Internet based business transactions. In the US, the enforceability of contracts of adhesion remains unsettled and the choice of law question in the contracts as such is left unanswered. The article analyzes the nature of contracts of adhesion as opposed to the party autonomy principle in contractual choice of law, and argues that contracts of adhesion do not conform to the basic notion of party autonomy. The article suggests that the choice of law clause in contracts of adhesion shall not take effect unless adherents meaningfully agree. The article proposes a “second chance” approach for contractual choice of law in contracts of adhesion. The approach is intended to set a general rule that a choice of law clause in an adhesive contract shall not be deemed enforceable prior to affirmation of the true assent of adherent.

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