

17A Am. Jur. 2d Contracts § 255

American Jurisprudence, Second Edition | August 2018 Update
Contracts

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West's Key Number Digest

- West's Key Number Digest, Contracts  101(1), 127(1)

Treatises and Practice Aids

- Williston on Contracts §§ 19:5, 19:6 (4th ed.)

Forms

- Forms for contract provisions specifying governing or applicable law, see Am. Jur. Legal Forms 2d, Conflict of Laws [[Westlaw®\(r\) Search Query](#)]

Definition:

A “choice of law” provision in a contract names a particular state and provides that the substantial laws of that jurisdiction will be used to determine the validity and construction of the contract, regardless of any conflicts between the laws of the named state and the state in which the case is litigated.¹

Ordinarily, the parties to a contract may agree as to the law which will govern their transaction,² and when they have done so, the sensible forum for adjudication is that state.³ Choice-of-law provisions are recognized as valid⁴ and will generally be enforced by the courts⁵ as long as they are reasonable,⁶ and good morals⁷ and fundamental policies of law are not violated.⁸

Courts may use general contract principles to resolve the question of whether parties may stipulate to a choice of law in their contract.⁹

Observation:

The U.S. Supreme Court has consistently accorded choice-of-law provisions presumptive validity, though the presumption of validity may be overcome by a clear showing that the provisions are unreasonable under the circumstances.¹⁰ Similarly, the Restatement Second, Conflicts of Laws provides that the law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.¹¹

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Footnotes

- 1 Johnston County v. R.N. Rouse & Co., Inc., 331 N.C. 88, 414 S.E.2d 30 (1992).
- 2 Petitto v. Petitto, 147 Md. App. 280, 808 A.2d 809 (2002); Dunes Hospitality, L.L.C. v. Country Kitchen Intern., Inc., 2001 SD 36, 623 N.W.2d 484 (S.D. 2001).
- 3 GPS USA, Inc. v. Performance Powdercoating, 2015 IL App (2d) 131190, 389 Ill. Dec. 484, 26 N.E.3d 574 (App. Ct. 2d Dist. 2015).
- 4 Burge v. Mid-Continent Cas. Co., 1997-NMSC-009, 123 N.M. 1, 933 P.2d 210 (1996).
- 5 Enzo Life Sciences, Inc. v. Adipogen Corporation, 82 F. Supp. 3d 568 (D. Del. 2015) (applying Delaware law); Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 264 Ill. Dec. 283, 770 N.E.2d 177, 47 U.C.C. Rep. Serv. 2d 1044 (2002).
- 6 Indiana Insurance Company v. CE Design Ltd., 6 F. Supp. 3d 858 (N.D. Ill. 2013).
- 7 Masters Group Intern., Inc. v. Comerica Bank, 2015 MT 192, 380 Mont. 1, 352 P.3d 1101 (2015).
- 8 Bank of New York v. Yugoimport, 745 F.3d 599 (2d Cir. 2014) (applying New York law).
- 9 Shearson Lehman Bros., Inc. v. M & L Investments, 10 F.3d 1510 (10th Cir. 1993) (applying Utah law).
- 10 Allen v. Lloyd's of London, 94 F.3d 923 (4th Cir. 1996).
- 11 Restatement Second, Conflict of Laws § 187(1).