

Determining the Lex Contractus in International Contract Disputes under Article 18 of the Algerian Civil Code: Substantive Scope and Limitations

تحديد قانون العقد في المنازعات التعاقدية الدولية بموجب المادة 18 من القانون المدني الجزائري: النطاق والقيود

Dr. Chebourou Noria ⁽¹⁾

Djillali Liabes University - Sidi Bel Abbes (Algeria)

noria.chebourou@univ-sba.dz

Received
Apr – 15 - 2026

Accepted
Sep – 10 - 2026

Published
Oct – 31 - 2026

Abstract:

Substantively, international contracts are governed under Article 18 of the Algerian Civil Code by the primary principle of party autonomy (*autonomie de la volonté*). Parties may designate the *lex contractus*, provided the chosen law maintains a genuine connection to the parties or the transaction, preventing opportunistic choices. In the absence of agreement, the adjudicator applies subsidiary connecting factors hierarchically: common domicile, common nationality, or the law of formation's place (*lex loci contractus*). This study critically evaluates the functional adequacy of these factors in identifying the governing law, highlighting their doctrinal strengths and practical litigation challenges. Furthermore, it delineates the substantive scope of the law governing international contracts, identifying governed matters and mapping the legal exceptions and constraints that limit its application

Key words: international contract- party autonomy- choice of law- *lex contractus*- *lex causae*- connecting factors- Algerian Civil Code (Article 18).

الملخص:

يخضع العقد الدولي من الناحية الموضوعية طبقاً لقاعدة الاسناد التي أوردها المشرع الجزائري في المادة 18 من القانون المدني الجزائري لضابط أصلي متمثل في ضابط الإرادة لذلك يتولى طرفا العقد اختيار القانون الواجب التطبيق على علاقتهما التعاقدية شرط أن يكون لهذا القانون صلة حقيقية بهما أو بالعقد المبرم بينهما، وفي حالة لم يتفق الأطراف على القانون الذي يحكم عقدهما ينتقل القاضي إلى تطبيق ضوابط احتياطية ذكرها المشرع على سبيل التدرج وهي قانون الموطن المشترك أو الجنسية المشتركة للمتعاقدين، وإن لم يتحد في الموطن أو الجنسية يتم الانتقال إلى تطبيق قانون الدولة التي أبرم فيها العقد، وقد سلّطت الدراسة الضوء على هذه الضوابط لمعرفة مدى فاعليتها في تحديد القانون الواجب التطبيق، والوقوف على مميزاتها والإشكاليات التي يمكن أن تثيرها، بالإضافة لبحث مجال تطبيق قانون العقد الدولي من خلال تحديد المسائل التي تندرج تحت لوائه، والاستثناءات الواردة عليه.

الكلمات المفتاحية: العقد الدولي- ضابط الإرادة- قانون العقد- الجوانب الموضوعية للعقد- الضوابط

الاحتياطية.

⁽¹⁾ Corresponding author: Dr. Chebourou Noria,

e-mail: noria.chebourou@univ-sba.dz

Introduction:

The development, diversification, and increasing ease of transportation, coupled with the information-technology revolution and the communications revolution, which have reshaped a broad range of economic, social, political, and cultural domains, have had a profound impact on the conclusion of contracts. In this sense, contracting is no longer confined to a single State territory; rather, contractual transactions frequently extend beyond national borders and become connected to multiple jurisdictions. This development has enabled the infiltration of a foreign element into contracts, whether at the stage of their formation or in relation to their effects. Such a foreign element may stem from the personal status of the contracting parties, or may relate to the place where the contract is concluded, the performance place, or the contract objects¹. Contracts of this nature are commonly designated as international contracts, in contradistinction to purely domestic contracts concluded between nationals and domestic in all their constituent elements, parties, subject-matter, and cause, and accordingly governed by a single law, namely the national law to which the elements of the contract belong².

Given that a contract containing a foreign element may be connected to more than one State, several laws may compete to govern it, both substantively and formally, including the parties' nationality or domicile laws, the State's law in which the juridical act was concluded (*lex loci contractus*), the place of performance's law (*lex loci solutionis*), and forum law before which the dispute is brought (*lex fori*). This multiplicity of potentially applicable laws gives rise to the classic problem of laws conflict and, more specifically, to the question of determining the law applicable to disputes generated by a contractual relationship involving a foreign element.

Resolving this difficulty requires recourse to the choice-of-law rules of Private International Law, these rules adopted by States to guide the judge in selecting, among competing laws, the law applicable to international private relationships. As a matter of principle, legislation addressing international contracts has relied, in respect of the intrinsic aspects of the contract, on a primary connecting factor: party autonomy. Parties to an international contract thus enjoy a relatively distinctive prerogative, compared with other conflict-of-laws situations, namely the ability to choose the law governing their contractual obligations. This mechanism constitutes one of the most effective means of securing legal certainty, inasmuch as the chosen law is more closely aligned with the parties' actual knowledge than with the presumed knowledge of the law. In addition, legal systems commonly provide a set of subsidiary connecting factors that maintain a relevant connection with either the contract or the contracting parties³.

However, it should be noted that the choice-of-law rule governing the adjudication of the law applicable to the substantive dimension of contractual disputes differs from the rule applicable to the contract's formal validity. Accordingly, the present study is confined to the law competent to govern disputes arising from international contracts as to substance. It aims to analyse the choice-of-law rule relating to the intrinsic aspects of the

contract and to identify the law applicable thereto through the operation of the relevant connecting factors, whether primary or supplementary. Furthermore, it seeks to delineate the scope of application of this rule by specifying the matters that fall within its domain and the exceptions that limit its operation.

Against this background, the central research question may be formulated as follows: Which law is competent to govern disputes arising from international contracts in their substantive dimension? This overarching question encompasses a set of subsidiary issues, most notably: To what extent are the parties free to choose the law applicable to their contractual relationship? Which connecting factors govern the determination of the applicable law where party autonomy is absent? And what is the scope of law application governing the contract as to substance?

To address these questions, this study is structured into two main parts as follows: Section One: Determining the law applicable to the substantive aspects of international contracts. Section Two: The scope of law application governing the contract as to substance.

Section I:

Determining the law applicable to international contracts in their substantive dimension

It is clear from the text of the 18th Article of the Civil Code⁴ that the Algerian legislator has constructed the choice-of-law rule relating to contractual obligations upon a fundamental connecting factor, namely the will of the contracting parties (party autonomy), together with other subsidiary connecting factors, namely the parties' common domicile or common nationality, and the law of contract's place of conclusion.

Accordingly, this section will address party autonomy as the principal criterion for determining the law competent to govern the substance of international contracts (A), and will then turn to the subsidiary or supplementary connecting factors relied upon in this field (B).

A) The Primary Connecting Factor (The Will of the Contracting Parties):

Given that a contract is the concurrence of two wills intended to produce legal effects, the will plays a major role in the contract, whether the contract is domestic or international.

To ascertain how far the connecting factor of will contributes to determining the law governing international contracts, it is necessary to clarify the concept of this rule (1), then to address the manner in which the law of party autonomy is determined and applied (2), and thereafter to examine the extent of the parties' freedom to choose the contract law(3).

1-The Concept of the Law of Party Autonomy:

The law of international contracts has long since settled upon a basic rule to the effect that the contracting parties themselves are the ones who determine the law governing the contract concluded between them⁵. The Private International Law' s

principle of party autonomy denotes the parties' freedom to determine the law governing the contract intended to be concluded, where such a contract is of a kind that may potentially be subject to the laws of different States⁶.

This rule is therefore premised upon respect for the principle of the autonomy of will within international contractual relationships, because the will is capable of creating obligations and adhering to them within the framework of domestic dealings or beyond it. For that reason, it was necessary to protect this will through law, namely through choice-of-law rules, by enabling individuals to choose the law governing their contractual relationships, whether in respect of the conditions of formation or in respect of effects, so long as this achieves their interests and does not lead to harm to third parties or to the sovereignty of the State⁷.

In the nineteenth century, the rule of the law of party autonomy became established in Private International Law's doctrine, and was adopted by both Savigny and Mancini. It also became a rule recognised legislatively⁸ and judicially in many States. Moreover, this rule was consecrated by numerous international conventions, such as The Hague Convention concluded on 15 June 1955 relating to the law applicable to international sales of corporeal movable products (Article 25/1), and also The Hague Convention concluded on 14 March 1978 relating to the law applicable to agency and brokerage contracts (Article 1/5)⁹.

2- How the Law of Party Autonomy Is Determined and Given Effect

The parties' choice of the law governing the contract may be either expressed or implied.

*** Expressed choice of the applicable law :**

In this case, the contracting parties expressly agree to subject the international contract concluded between them to a specific law, in application of the principle of autonomy of will. The expression of will is deemed express where it is manifested through any mode of expression whose circumstances leave no doubt as to its intended meaning¹⁰.

This choice is expressed by an explicit clause in the contract or in a subsequent agreement; for example, the contract may stipulate: "This contract shall be governed by French law", or Egyptian law, or Tunisian law, etc.

Where the contract stipulates that it is subject to a particular law, that law must be applied, since the judge is bound to affect the parties' choice in accordance with the legislator's rule granting them this authorization. Every express choice by the parties entails a corresponding duty on the judge to respect it, and then the judge will not be in a position to depart from that choice¹¹.

*** Implied will**

In the absence of expressed indication by the contracting parties as to the law chosen to govern the contract concluded between them, recourse is made to the implied will. A strand of legal scholarship has defined implied expression as follows: "Expression

is implied when it is not customary among people, but, in particular cases of the two parties' relationship, it cannot be interpreted except as an expression of will"¹². Implied will is inferred from both circumstances and indicia surrounding the contract, such as drafting the contract in a particular language, selecting the currency of a particular State for payment, or agreeing that the contract can be performed in a specific State; these constitute indicia of the parties' implied will to subject the law of contract of that State¹³.

In the Algerian legislator, the Civil code's 18th Article does not expressly provide for adopting the parties implied will in determining the applicable law where expressed will is absent. This has led to disagreement in doctrine and its division into three trends:

* First trend considers that the Algerian legislator has adopted implied will, relying on the Civil Code's 60th Article (2), which provides: "Expression of will may be implied if the law does not require it, or the parties do not agree, to be express." Since the 18th Article of the Civil Code does not require the parties' expression of will to be expressed, this means there is no impediment to taking implied expression of will into account in accordance with the general theory of contract¹⁴.

* Second trend holds that the Algerian legislator adopted express will without implied will, because Article 18 of the Civil Code does not include the clause providing for reliance on implied will where express will does not exist¹⁵. As for reliance on Article 60 of the Civil Code, this view considers it to lack a legal foundation, on the basis that the latter applies to domestic contracts rather than international contracts¹⁶.

* Third trend favours leaving the matter to the judge's discretionary power; however, this view is criticised due to the possibility of judicial arbitrariness in refusing to recognise the parties' implied will, which may in fact exist, as a consequence of the discretion conferred upon the judge¹⁷.

For our part, we support the second trend. The Algerian legislator did not, through Article 18 of the Civil Code, provide, as the Egyptian legislator did, for adopting implied will; nor did he refer to it, even indirectly. This indicates that he recognises only the parties' expressed will in determining the law governing the international contract. Indeed, the 18th Article provides for direct recourse to either the common domicile or the common nationality law in the absence of expressed will indicating the applicable law; and if it is not feasible to apply the law of the common domicile or the common nationality, the place of conclusion's law is applied.

3- The Extent of the Contracting Parties' Freedom to Choose the Applicable Law:

Prior to the amendment of the 18th Article of the Civil Code, the Algerian legislator did not restrict the contracting parties' will in choosing the law applicable to the contract; but he granted them absolute freedom. Accordingly, the contracting parties were able to choose any law to govern the contract concluded between them, even if it bore no connection whatsoever to the contract or to the contracting parties. This was subjected to criticism, because the prevailing and dominant approach in most legal systems is to require a solid connection between the chosen law and the contract/contracting parties. Also, the legislator provided for recourse to the place of conclusion's law in the absence

of a choice, meaning that the legislator undertook the process of localisation himself in this case and preferred the linking factor of the place of conclusion over other linking factors that might be more significant, such as common nationality, common domicile, and the place of performance¹⁸.

However, following the amendment of Article 18 by Law No. 05-10, the Algerian legislator demanded that the law chosen by the parties' will have a genuine connection with the contracting parties or with the contract. The legislator also adopted subsidiary connecting factors where the will does not intervene to choose the law governing the contract, namely the common domicile or the common nationality, in addition to the connecting factor of the place in which the contract was concluded.

Accordingly, the legislator allowed the parties to freely choose the law governing the contract, but their freedom is not absolute, yet it is restricted by the requirement that a genuine connection exist between the chosen law and the contracting parties or the contract. By "genuine connection," the legislator means that the chosen law must have an actual and strong link to the contracting parties or to the contract; thus, it is "the objective relation that links the chosen law to the contract/ the contracting parties, so that the parties must choose from among the legal systems which the judge would have chosen had he been entitled to do so"¹⁹.

Where the parties choose a law with no genuine connection with the contract or with the contracting parties, the judge will exclude it, on the basis that this constitutes an indication of the parties' evasion of the law that is originally applicable to the contractual relationship, and this is regarded as fraud upon the law. Also, the law of party autonomy will be excluded if it violates public policy in the judge's State²⁰; thus, the parties' freedom to choose the law governing the contract is also limited by the requirement that the chosen foreign law not contravene public policy and public morals in the forum State²¹.

B) Subsidiary Connecting Factors Relied Upon in Determining the Law Applicable to International Contracts in Their Substantive Dimension:

Prior to the amendment of the Algerian Civil Code's 18th Article, the Algerian legislator subjected the substantive aspects of the international contract to a primary connecting factor, namely party autonomy, and to a subsidiary connecting factor to which recourse is made where the parties remain silent, namely the contract's place of conclusion. Accordingly, the legislator confined the matter to only two connecting factors: party autonomy and the international contract's place of conclusion²².

However, Article 18, as amended by Law No. 05/10, expanded the circle of connecting factors governing international contractual obligations in the absence of the connecting factor of will, by relying on an objective localisation of the contract through subsidiary connecting factors represented in the common domicile law, the common nationality law, and the place of conclusion's law. The legislator set out these connecting factors in a graduated sequence: the first is the law selected by the parties' will, provided

that it holds a genuine connection with the contract or with the contracting parties; if the parties' will does not intervene to choose a particular law, recourse is made to the common domicile's or the common nationality's law; and if the parties differ in domicile and nationality, the judge applies the State's law where the contract was concluded.

Accordingly, the Algerian judge must adopt one of these connecting factors if the parties to the contract remain silent as to determining the law governing the contract concluded between them, and if they choose a law that has no connection with them or with the contract concluded between them²³. In applying these subsidiary connecting factors, the judge is bound by the ordering stipulated by the Algerian legislator in the 18th of the Civil Code: first, he begins with the connecting factor of the common domicile (1) or the common nationality (2), and if that is not possible, he then moves to the application of the place of conclusion's law (3).

1- The Connecting Factor of the Parties' Common Domicile:

The second connecting factor upon which the judge will rely in determining the law governing the substantive aspects of the international contract, if the party autonomy's law is absent, or if the law chosen by the parties lacks a genuine link with them or with the contract, is the law of the contracting parties' common domicile. The judge first investigates the domicile of the contracting parties; if he finds that they share a single domicile, he applies the law of their common domicile.

The legislator's adoption of the law of the common domicile is attributable to the importance of domicile in financial dealings and international relations. Moreover, the contracting parties' unity of domicile is regarded as an indication that they have chosen the law of their common domicile to apply to the contract between them, on the assumption that the parties to the contract have greater familiarity with the law of that domicile than with any other, which enables them to anticipate the effects of its application to their contract²⁴.

2- The Connecting Factor of the Parties' Common Nationality:

If the contracting parties did not determine the law applicable to the contract, or if the chosen law is not linked to the parties or to the contract, and they carry the same nationality, in that case, the judge applies the contracting parties' common nationality law. One of the advantages of relying on this connecting factor is that the contracting parties are sufficiently familiar with the legal provisions governing contractual obligations within their national law²⁵.

It is worth mentioning that the connecting factors of common domicile and common nationality are optional, because the Algerian legislator used the term "or". This means that, if both the domicile and the nationality of the contracting parties are unified, the judge seized of the dispute is afforded a choice in determining the law applicable to the contractual relationship between the connecting factor of both common domicile and the one of common nationality.

3- The Connecting Factor of the Contract's Place of Conclusion:

If the contracting parties have not select the law to which the contract concluded between them will be subject, or if they have chosen a law that has no relation to them or to their contract, and they have neither a common domicile nor a common nationality, the judge then proceeds by applying the contract's place of conclusion law as the final subsidiary connecting factor adopted by the Algerian legislator, pursuant to the 3rd paragraph of the 18th Article of the Civil Code.

The legislator's reliance on this connecting factor is justified by his desire to facilitate matters for contracting parties and to take into account the needs of international transactions. This law is considered suitable for the contracting parties because it is the place chosen by them to conclude their contract, which presupposes their prior awareness of the provisions of that law; thus, their implied will is deemed to have been directed towards applying it²⁶. Among the advantages of adopting this law is the achievement of unity of the law governing the contract as to substance and form, since the form of the contract is governed by a basic and primary connecting factor, namely the place of conclusion²⁷.

It is necessary to mention that the legislator did not rely upon an important connecting factor in the field of international contracts, namely the contract's place of performance, which Savigny advanced on the basis of the idea of voluntary or elective submission. When he analysed legal relationships, he localised the relationship, and localisation occurs in the place where the contractual relationship produces its effects, or most of its effects²⁸. Likely, Batiffol considers that of the place of performance's law is the best law to govern the international contract; and if the objection to it lies in the multiplicity of places of performance in some instances, then, in such cases, reliance should be placed upon the place of principal performance²⁹, i.e., the application of the law that constitutes the greatest weight in the contract wherein interests are concentrated, the place of performance's law of the principal obligation.

Section II: The application's scope of the law governing the substance of the international contract (the law chosen by the parties' will, or the subsidiary connecting factors replacing it)

After determining the law of the contract, which matters are governed by this law, and which matters and contracts fall outside its application's scope?³⁰

The Algerian legislator did not specify which matters fall within the the contract's substantive dimension, nor what falls within the application's scope of the choice-of-law rule set out in the 18th Article and what falls outside it, unlike the Tunisian legislator, who, through the 64th Article of the Private International Law's Code, identified the matters subject to the contract law determined in Article 62 of the same Code. The determination of the substantive aspects of the contract constitutes a matter of characterisation (qualification) which, according to the general rule on characterisation, is ruled by the law of the judge (*lex fori*)³¹.

A) The Substantive Aspects Governed by the Law of the Contract:

The application's scope of the law governing the international contract comprises three basic legal dimensions: the formation of the contract (1), the contract's effect (2), and its extinction's causes (3).

1- The Contract's Formation:

The contract's law governs the formation of the contract, i.e., its essential elements consisting of consent, subject-matter, and cause.

*** The element of consent:**

The exchange of offer and consent between the contracting parties is governed by the contract's law where mere acceptance suffices; however, if a particular form is required, then form is governed by the law of form³². Therefore, the contract's law determines when acceptance corresponds to offer, and it also explains how the will is expressed, whether implied expression is sufficient or whether expressed expression is required³³.

As for defects of consent, doctrine has differed. Bartin considered that they are ruled by the nationality law, on the basis that they aim at protecting the will of the person rather than the contract. Another view distinguishes between defects of will (lack of capacity, imbecility, prodigality, heedlessness, and insanity) and subjects them to the law of nationality on the ground that they belong to personal status and relate to the person's capacity, which is governed by nationality law; and defects of consent, namely mistake, fraud, duress, and exploitation, and subjects them to the law of party autonomy on the basis that they are not defects in the person himself, but rather defects affecting the contract as such³⁴.

As for exploitation, and given that the Algerian legislator grounds it in manifest recklessness or overpowering passion in the injured contracting party (Article 90 of the Civil Code), it is treated as a defect in the person, and accordingly is governed by the law of nationality³⁵.

As for lesion in sale or partition, it is a defect in the contract, and is therefore assessed by an objective criterion; accordingly, it is governed by the contract's law³⁶.

*** The contract's subject-matter:**

The contract's subject-matter, and its conditions: determined or determinable, possible, and lawful, are governed by the law of the contract. It is the contract's law that determines the conditions that must be satisfied, whether the subject-matter is capable of being the object of dealings or not, how it is determined, and the method for establishing its existence or the possibility of its existence.

Some jurists consider that if the contract's subject-matter is property, then recourse must be made to the situs of the property's law to determine whether it is capable of being the object of dealings or not; and that recourse must be made to the place of performance law of the act in cases where the contract's subject-matter is an act³⁷.

*** Cause:**

The contract's cause is governed by the international contract's law, and the provisions of that law are relied upon to determine whether the cause exists or does not, and to establish whether the cause is lawful or unlawful³⁸.

However, if the cause is unlawful vis-à-vis the law of the judge, the latter will exclude the party autonomy's law due to its conflict with public policy in his State, and will accordingly apply the law of the judge pursuant to the 24th Article of the Algerian Civil Code.

2- The Contract's Effects:

The contract's effects are, in general, governed by the law of the contract, whether as to its effects in relation to people, in which case recourse is made to that law to determine the persons bound by the contract and those benefiting from it, the question of undertaking on behalf of a third party, stipulation for the third party's benefits, the extension of the contract's effects to the universal successor, and its effects in relation to the particular successor. That law also determines the actions that the creditor may bring against the debtor

In addition, it governs matters relating to the subject-matter of obligations that arise from the contract: the contract's law determines the content of the obligations arising from the contract, their rules and scope, their performance, the methods of performance, the cases of specific performance, performance by equivalent and its rules, the regulation of contractual liability arising from non-performance of contractual obligations, the action for damages for non-performance, the rules governing the penalty clause contained in the contract, the cases of impossibility of performance and their rules, etc³⁹. As for legal matters relating to coercive fines and enforcement by compulsion, they are governed by the judge's law because they are connected to the civil security of the forum State and public policy⁴⁰.

The contract's interpretation is likewise governed by the contract's law, which is relied upon in cases where the contract requires interpretation, in order to ascertain the rules of interpretation and the principles that must be followed in interpreting the contract. The law of the contract also governs the transfer of the obligation, whether by assignment of debt or assignment of claim, with the exception of the procedures required for enforceability against the debtor, which are governed by the debtor's domicile's law⁴¹.

Section III:

Extinction of the Contractual Obligation

According to the prevailing view in doctrine, most legal matters leading to the extinction of contractual obligations are ruled by the contract's law. The latter determines the methods of extinction by payment or voluntary performance, and the conditions of their validity, their subject-matter, their time, and their place, provided that performance does not contravene the State's public policy in which performance occurs⁴².

Moreover, the contract's law governs the extinction of the obligation by release, novation, impossibility of performance, and the request for rescission of the contract due to non-performance by one of the parties. The rules of extinctive prescription, its duration and effects, are also ruled by the contract's law according to the predominant doctrinal view.

The competence of the law of the contract extends to include contractual set-off; as for judicial set-off, it is ruled by the judge's law due to its connection to the judge's powers hearing the dispute. Legal set-off has been the subject of doctrinal disagreement: some have subjected it to the contract's law; others to the judge's law; a third view applies the law governing the obligation that led to the set-off; while a fourth view applies the law governing the debt against which set-off is raised as a ground of extinction⁴³.

A) Exceptions to the Application of the Law Governing the Contract's Substantive Aspects:

As a general rule, all international contracts are subject, in their substantive aspects, to the choice-of-law rule governing the substance of the contract. However, certain matters are excluded from submission to that law, such as the capacity of the contracting parties and the formal aspects of the international contract. In addition, certain contracts fall outside the application's scope of the contract law provided for in the 18th Article of the Algerian Civil Code for particular reasons.

1- Matters Excluded from Submission to the Contract's Law:

The contracting parties' capacity is excluded from the application's scope of party autonomy's law. Although capacity is regarded as a condition for the contracting validity, it is, in reality, closely attached to the person; therefore, it is governed by the nationality law. The legislator has singled it out through a specific rule by virtue of the 10th Article of the Algerian Civil Code.

Also, excluded from the choice-of-law rule governing the substance of the international contract are matters relating to the form of contracts. These are governed by the choice-of-law rule set out in the 19th Article of the aforementioned Code, which rules the form of juridical acts in general. Pursuant to that provision, the international contract's form is governed by the place law where it was concluded; the legislator also permitted it to be governed by the contracting parties' common domicile law, or their common national law, or the law governing the contract's substantive provisions⁴⁴.

The choice-of-law rule governing the substance of the contract likewise does not apply where there exists a text that derogates from it, whether in an international convention in force in Algeria or in a special statute (Article 21 of the Algerian Civil Code).

2- Contracts Excluded from the Law Governing the Contract's Application:

Contracts relating to immovable property fall outside the application's scope of the contract's law. The final paragraph of the 18th Article of the Algerian Civil Code provides: "However, contracts relating to immovable property shall be ruled by the law of its situs."

Pursuant to this provision, contracts relating to immovables are not subject to the law of party autonomy; rather, they are ruled by the law of the situs of the immovable (*lex rei sitae*).

Contracts relating to personal status (such as the marriage contract, for example) are also excluded from submission to the contract's law. The legislator has allocated matters of personal status to specific choice-of-law rules, set out in both Algerian Civil Code's 10th and 16th Articles, and has subjected them, as a general rule, to the law of nationality, including contracts relating to personal status⁴⁵.

In addition, the party autonomy's law does not encompass contracts in which the State is a party in its capacity as a holder of authority and sovereignty and as one of the subjects of Public International Law. Such contracts fall within the international agreements scope governed by Public International Law. However, if the State contracts in the capacity of an ordinary person and not as an authority, such as contracting for the purchase of oil, wheat, or coal, the contract in that case is controlled by the law chosen by the two contracting States⁴⁶.

International employment contracts are excluded from the application's scope of the party autonomy's law because they are predominantly regulatory in character, which renders most of their rules mandatory and not subject to derogation by private agreement or to a freely chosen governing law⁴⁷.

Conclusion:

In conclusion, this study shows that the substantive aspects of international contracts are, in principle, ruled by the law designated by the contracting parties' will. However, the parties' freedom to select the applicable law is not absolute; rather, it is constrained by the requirement that the selected law hold a genuine connection either with the contract or with the contracting parties. Without the party autonomy's law, recourse is made to subsidiary connecting factors in order to determine the law competent to govern the international contract as to substance, namely the contracting parties' common domicile law or their common nationality law; failing that, the judge applies the place's law where the contract was concluded. While the contract's law governs matters relating to the contract's formation, effects, and extinction, certain matters fall outside its application's scope, such as the contracting parties' capacity and the formal aspects of the international contract. Moreover, certain contracts are excluded from submission to the choice-of-law rule governing contracts due to their special nature, such as contracts relating to immovable property, employment contracts, contracts concluded by the State in its capacity as a subject of Public International Law, and contracts relating to personal status.

The Algerian legislator deserves credit for intervening to address the problem of laws conflict in the international contracts field by providing a specific choice-of-law rule determining the law applicable to contracts containing a foreign element. Nevertheless, the wording of the 18th Article of the Civil Code ought to be amended by replacing the

expression “contractual obligations” with “international contracts,” as the Tunisian legislator has done, so that the rule becomes general, comprehensive, and clear, applying to all substantive aspects of the contract of an international character rather than being confined to its effects alone. The phrase currently used suggests, as though, that the contract has already been validly formed and is productive of its effects.

Furthermore, the legislator has neglected an important connecting factor in the field of international contracts, namely the contract’s place of performance. The contract’s localisation lies more in the place of its performance than in the place of its conclusion, especially where the contract is concluded in one State and performed in another, since the place of performance remains more closely connected to it than the place of conclusion. Accordingly, the legislator should adopt this connecting factor among those relied upon in determining the law competent to govern international contracts as to substance. The legislator should also settle the doctrinal controversy by specifying the matters that fall within the application’s scope of the contract’s law, as well as the matters and contracts excluded from its application.

Bibliography:

¹ - Fouad Deeb, **Private International Law 2**, Syrian Virtual University, Syrian Arab Republic, 2018, p. 170.

² - Hassan Al-Haddawi, **Private International Law (Conflict of Laws: General Principles and Positive Solutions in Jordanian Law; A Comparative Study)**, Dar Al-Thaqafa Library for Publishing and Distribution, Amman, Jordan, 1997, p. 146.

³ -Abbas Zuboun Al-Obaidi; Laith Abdulrazzaq Ali Al-Anbari, **“The Choice-of-Law Agreement Applicable to the International Contract”**, *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Issue No. 3, Part I; 2017; p. 03.

⁴ - Ordinance No. 75-58 dated 26 September 1975 enacting the Civil Code, as amended and supplemented by Law No. 05-10 dated 20 June 2005 and Law No. 07-05 dated 13 May 2007.

⁵ - Amhamed Saad Eddine, **“Controls on the Application of Party Autonomy to Solve the Conflict-of-Laws Problem in International Contracts”**, *Algerian Journal of Legal and Political Sciences*, Faculty of Law, University of Algiers 01 (Yousef Benkhedda), Vol. 54, No. 02; 15/06/2017; p. 387.

⁶ - Ziad Mohammad Faleh Bshabsha; Ahmed Al-Haraki; Imad Qattan, **“The Role of the Parties’ Will in Choosing the Applicable Law for International Contractual Obligations under Jordanian Law, A Comparative Study”**, *Al-Quds Open University Journal for Research and Studies*, Vol.1, Issue 30; June 2013; p. 358.

⁷ - Fouad Deeb, *op.cit.*, pp. 171–172.

⁸ - Among the legislations that adopted the rule that the international contract is governed by the law of party autonomy are: the Algerian Civil Code (Article 18), the Tunisian Code of Private International Law of 1999 (Article 62), the Egyptian Civil Code (Article 19(1)), and Kuwaiti Law No. 05 of 1961 (Article 59).

⁹ - Amhamed Saad Eddine, *op. cit.*, p. 390.

¹⁰ - Abbas Zuboun Al-Obaidi; Laith Abdulrazzaq Ali Al-Anbari, *op. cit.*, p. 11.

¹¹- Mohamed Khalifa Abdullah Abdel Aal, ***“The Law Applicable to Disputes Arising from International Contracts”***, *Journal of Legal Studies*, Faculty of Law, Assiut University, Egypt, Issue 60, Part II; June 2023; p. 725.

¹²- Abbas Al-Obaidi; Kazem Hammadi Youssef, ***“The General Theory of Implied Will, A Comparative Study”***, *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Issue No. 5, 2019; p. 10.

¹³- The Rome Convention signed between the States of the European Common Market on 19 June 1980 on the law applicable to contractual obligations likewise adopted implied will, as Article 3(1) expressly provides: *“A contract shall be governed by the law chosen by the parties; such choice must be express case ...”*. Firas Karim Shi'an; Aram Issam Khudair, ***“The Impact of the Party Autonomy Principle on the Imbalance of International Contracts”***, *Tikrit University Journal of Law*, Year 8, Vol. 3, Issue 29; March 2016; p. 232.

¹⁴- Kawthar Majdoub, ***“Limits of Party Autonomy in Determining the Applicable Law to the Consumer Electronic Contract”***, *History of Sciences Journal*, Ziane Achour University (Djelfa), Issue 8, Vol. 2; June 2017; p. 266.

¹⁵- Abdelnour Bounah, ***“The Law Applicable to the International Licensing Agreement in Algerian Legislation”***, *Journal of Rights and Freedoms*, Mohamed Khider University (Biskra), Vol. 10, No. 02; 2022; p. 750–751.

¹⁶- Hiba Sherif, ***The Law Applicable to the International Commercial Contract***, Master's Dissertation, Faculty of Law, University of Algiers 1 (Yousef Benkhedda), Algeria, p. 61.

¹⁷- Abdelnour Bounah, op. cit., p. 751.

¹⁸- Amhamed Saad Eddine, op. cit., p. 404.

¹⁹- Khaled Shuwairib, ***The Law Applicable to the International Commercial Contract***, PhD Thesis, Faculty of Law, University of Algiers (Yousef Benkhedda), 2008–2009, p. 41.

²⁰- Abdelnour Bounah, op. cit., p. 755; Kawthar Majdoub, op. cit., p. 269.

²¹- Article 24 of the Algerian Civil Code.

²²- Article 18, first paragraph, of the Civil Code previously read as follows: *“Contractual obligations shall be governed by the law of the place where the contract is concluded, unless the contracting parties agree to apply another law.”*

²³- Yamina Kahloula, Lectures in Private International Law, intended for third-year LMD students (Private Law), University of Oran 2 (Mohamed Ben Ahmed), 2022, p. 88; Amara Amara, Lectures in Private International Law, Conflict of Laws, intended for third-year LL.B. students (Private Law), Faculty of Law and Political Science, Mohamed Boudiaf University (M'sila), 2022–2023, p. 103.

²⁴- Abdelnour Bounah, op. cit., p. 759.

²⁵ Mohamed Qaray; Khaldiya Mekki, ***“The Rule of Form in Contractual and Negotiable Instruments Obligations within the Framework of Private International Law”***, *Journal of Comparative Legal Studies*, Hassiba Ben Bouali University (Chlef), Vol. 07, No. 01; 2021; p. 503.

²⁶ Abdelnour Bounah, op. cit., p. 761.

²⁷ Fouad Deeb, op. cit., p. 175.

²⁸ Ziad Mohammad Fateh Bshabsha; Ahmed Al-Haraki; Imad Qattan, op. cit., p. 371.

²⁹ Ali Ali Suleiman, ***Notes on Algerian Private International Law***, 4th ed., Office des Publications Universitaires (OPU), Algiers, 2006; p. 114.

³⁰ - From a reading of the first paragraph of Article 18 of the Algerian Civil Code, it may be observed that the legislator provides that: “contractual obligations shall be governed. Doctrinal controversy has arisen as to the intended meaning of “contractual obligations” to which the law governing the substance of the international contract applies. One view holds that “contractual obligations” encompasses only matters relating to the effects of the contract, namely those relating to the persons bound by the contract and those benefiting from it, the content of the obligation, the transfer of the obligation, and its termination. Another view, however, maintains that “contractual obligations” include the effects of the contract in addition to everything relating to the formation of the contract, its characteristics, its transfer, and its extinction. This is the view that has become established in the doctrinal and judicial practice in the Arab States³⁰. What supports this approach is that, by reference to the Civil Code, the legislator titled Book Two as “Obligations and Contracts”, and placed under it Chapter One entitled “Sources of Obligation”, among them the contract in all its aspects and various constituent elements (conditions of the contract; avoidance and nullity; effects of the contract; dissolution of the contract). Hassan Al-Haddawi, op. cit., p. 155–156; Fouad Deeb, op. cit., p. 176.

³⁰ - Fouad Deeb, op. cit., p. 176

³¹ - This is pursuant to Article 09 of the Algerian Civil Code.

³² - Ali Ali Suleiman, op. cit., p. 119.

³³ - Abdelkrim Belayour, op. cit., p. 378.

³⁴ - Ali Ali Suleiman, op. cit., p. 119.

³⁵ - Fatiha Bachour, *Lectures in Private International Law—Conflict of Laws*, intended for third-year LL.B. students (Private Law), Faculty of Law and Political Science, Akli Mohand Oulhadj University (Bouira), 2016–2017, p. 61; Ali Ali Suleiman, op.cit., p. 119.

³⁶ - Ali Ali Suleiman, *ibid.*, p. 120.

³⁷ - Hassan Al-Haddawi, op. cit., p. 156; Ali Ali Suleiman, op. cit., p. 120.

³⁸ - Abdelkrim Belayour, op. cit., p. 379.

³⁹ - Fouad Deeb, op. cit., p. 178.

⁴⁰ - Abdelkrim Belayour, op. cit., p. 381.

⁴¹ - Fouad Deeb, op. cit., p. 178

⁴² - Fouad Deeb, op. cit., p. 178.

⁴³ - Abdelkrim Belayour, op. cit., p. 381–382.

⁴⁴ - Mohamed Qaray'; Khaldiya Mekki, op. cit., p. 500.

⁴⁵ - Abdelkrim Belayour, op. cit., p. 377; Hashim Sweidan, op. cit., p. 532.

⁴⁶ - Ali Ali Suleiman, op. cit., p. 117–118; Abdelkrim Belayour, op. cit., p. 377.

⁴⁷ - Abdelkrim Belayour, op. cit., p. 377.

