

Autonomy in International Contracts

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Autonomy is central to the effectiveness and validity of all types of international contracts. This is so fundamental in today's scenarios where a party's freedom to contract is constantly being weakened or extended as the case may be, by the frontiers of technology, emerging commercial practices and realities. This book has approached the subject of autonomy in international contracts from a combination of historical, developmental, legal and practical perspectives. This integrated approach has therefore set in context the various topics covered in rest of the book.

The book starts by examining the status of autonomy and its sources by addressing the vexed question of whether there is anything as "a law of the forum". Other aspects of the book have discussed the various problems and issues surrounding the validity of choice of law clause thus further raising the difficult question of whether autonomy should be considered as a matter of implied principle or is to be looked at as a case of actual choice. It also discusses the issues of contract splitting and the protection of the weaker party to international contracts.

The issue then put forward for examination is extent to which contract sans loi i.e. (the need for reference to a system of law) should define the boundaries of autonomy in international contracts. In such a situation the parties, by their choice of law, could in appropriate cases, avoid the mandatory requirements of the law otherwise applicable. (p.175)

In discussing mandatory rules in international contracts, the author examines various issues affecting the nature and object of mandatory rules, including rules of a third country and the relationship between arbitration and mandatory rules. In this regard, he draws a fine line between enforcement of international contracts and international public policy. This demarcation, in practice, raises interesting issues-namely, whether arbitration bodies should enforce awards pertaining to international contracts that offend against even the minimum standards of morality and good conscience. The book concludes by describing the connection between choice of law, contract and tort.

The general trend of this work has been to establish a connection between autonomy and international contracts in both the narrower and wider senses of the relationship. This approach appears necessary if one is to appreciate the extent to which the weaker party, in a supposedly free contract, could be protected by principles of international contracts. The book aptly demonstrates this possibility by examining various categories of contracts in need of such protection.

The book also succeeds in demonstrating that barriers such as those of territoriality and sovereignty, which hitherto have attempted to limit the question of autonomy in international contracts, need to be further re-defined. This is particularly so where these artificial barriers are now increasingly being flexed through the internationalisation of capital and globalisation of relations between nations and peoples. It therefore represents an authoritative piece of work in area of autonomy in international contracts.

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