

Although choice-of-law in the tort context is in a relative state of disarray, the underlying theme apparent in analyzing recent cases is that courts tend to enforce the rights of forum resident plaintiffs. As such, results tend to generally disfavor the forum-shopping plaintiffs.

2) CONTRACTS

a) General Approaches Absent Clause Governing Choice-of-Law

If a contract does not possess a valid choice-of-law provision, courts will employ one of several tests to determine which forum's law to apply

(1) First Restatement (Place of Making Rule) (**Alabama**)

Under the First Restatement, a court will employ the law of the place where the contract was "made." Accordingly, a court would examine where the contract was entered into (not necessarily negotiated), and enforce the law of that state with regard to most contract issues. Consequently, contracts made at a business meeting in a distant location with no connection to the parties were governed by the laws of the distant location.

(a) Exception - Performance Issues

When examining issues of performance of the contract, the court will examine the law of the jurisdiction in which performance was due.

(2) Second Restatement

The Second Restatement rejected the "place of making" approach of the First Restatement. Under the Second Restatement, a court must determine which court possesses the most significant relationship with the contract under the circumstances. Courts will examine the general considerations set forth above. Additionally courts will examine the following factors:

- The place where the contract was made;
- The place where the contract was negotiated;
- The place of performance;
- Location of the subject of contract (if applicable);
- The connection of the parties to the forums.

b) Party Autonomy (Contractual Choice-of-Law Clauses)

Courts generally favor contracting parties' right to dictate which law will govern the interpretation of contracts. Therefore, as a general rule, choice-of-law clauses in a contract will be enforced. However, if a party **overreaches** or enforcing the choice-of-law provision would offend **public policy**, it will not be enforced.

(1) Overreaching – "Substantial Relationship" Requirement