

The New Private International Law of China — Cases on the Choice of Law Rules in Contracts and Torts (summary)

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In 1 April 2011, the first private international law called “Law of the Application of Law for Foreign-related Civil Relations of the People’s Republic of China” was enforced. The law consists of eight chapters and 52 Articles. The new law abolishes unilateral conflict rules, *renvoi* while adopts habitual residence in many places.

In the Report, I analysed 157 civil judicial precedent that heard by the court of Chinese mainland that applied new law from April, 2011 (after the new law enforcement) to July, 2013. According to the cases, I try to analyze the real application of the new law. Among the cases as is mentioned above, 151 cases applied China Law which accounts for more than 94%. In the 101 Contract or Torts cases, 42 cases adopted the Principle of the Most Significant Relationship, 25 cases adopted Party Autonomy Principle.

From the analysis of the cases, the next several points can be concluded.

(1) the dissemination is still slow more than 3 years late after the enforcement of the new law in the courts in Chinese mainland. This is because the “unwritten rule” that the new law should not be applied after the start of first instance when it has been not yet enforced.

(2) The “*Lex Fori*” is still strong after enforcement of new law. It is thought that this phenomenon comes from that the court can decide almost all of the law application only by judicial interpretations of the Supreme People’s Court.

(3) The order of the application about special rules and the general rules is not yet clear, especially the special rules for tort are not yet applied.

(4) About the attitude toward new law, there is disagreement between academy, legislature and in judicial practice. In judicial practice, the Supreme People’s Court is absolute authority, so they have to promise judicial interpretations.