California Choice of Law, Jurisdiction & Venue Clauses

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The boilerplate section of many corporate agreements include a "governing law" provision. Often these provisions cover three related, but distinct choices – choice of law, choice of jurisdiction, and choice of venue. More importantly, the legal principles that govern these choices are not the same (at least here in California). In today's posting, I discuss a California choice of law statute that may be unfamiliar to many California lawyers. In upcoming posts, I'll discuss some surprising aspects of choice of jurisdiction and choice of venue clauses.

Section 1646 of the California Civil Code establishes a general choice of law rule for contracts: "A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." In 2006, the legislature added § 1301 to the California Commercial Code to add to and make specific the concept expressed in Civil Code § 1646. [I have for several years taught a class in commercial law (Articles 2, 2A and 7) at Chapman University School of Law.]

There's not too much surprising there. What is interesting is that the legislature later decided to add an exception to § 1646 by enacting § 1646.5. Thus, notwithstanding § 1646, the parties to a contract relating to a transaction involving at least $250,000, including a transaction covered by Commercial Code § 1301(a), may agree that California law governs their rights and duties in whole or in part, *whether or not the contract or transaction bears a reasonable relation to California.* Of course, that begs the question of why the parties might want to choose California law when the contract or transaction bears no reasonable relationship to this state.

A few things about the statute are worthy of note. First, the statute is one-way. In other words, it doesn't authorize the parties to choose another jurisdiction's law. Second, there are some exceptions – the statute won't apply to:

- Contracts for labor or personal services;
- Relating to any transaction for personal, family or household purposes; or
- To the extent contrarty to Commercial Code § 1301(c).

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Lastly, the statute is expressly retroactive.

So why did the California legislature think § 1646.5 was a good idea? In *Credit Lyonnaise Bank Nederland N.V. v. Manatt, Phelps, Rothenberg & Tunney et al.*, 202 Cal. App. 3d 1424, 1433 n.14 (1988) cited the following reasons for the enactment of the predecessor to the current statute:

> *The Legislative purpose behind this bill was "to promote California as an international commercial arbitration center" (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 3223 (1985-1986 Reg. Sess.) as amended Mar. 31, 1986) by ensuring "the effectiveness of California choice of law clauses in large commercial contracts" (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3223 (1985-1986 Reg. Sess.) as amended Mar. 31, 1986). The sponsor felt this bill would enable "foreign businesses entering a commercial contract to designate California and the laws of California, a neutral forum, to govern any contract disputes that arise." (Sen. Rules Com., 3d reading, Analysis of Assem. Bill No. 3223 (1985-1986 Reg. Sess.)*

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