Iranian and French Laws and the Conflict of Laws in their Commercial Contract

Alireza Ebrahami,
Assistant Professor, Department of the International Law, University of Qom, Iran

Katayoon Nazarboland
Master of Private Law, University of Qom, Iran

Abstract
The commercial contracts play an important role as a significant tool to transfer the capital, and in fact, they reflect completely the international trade relations based on the contractual system that necessarily the foreign element is assumed in it. But when a dispute occurs for performing the provisions of a commercial contract between the parties, the issue of conflict of laws is raised and it means that the court must decide which proposed and relative law is applicable among the laws. Iran Civil Code has assigned the Article 968 in respect of the Conflict settlement that first part of the Article recognizes the law governing of the place where a contract is made in compliance with the traditional theory of the French legal system, unless the parties of the contract are a foreigner and select another law. Therefore, given the foot of the Article, the foreigners can choose the law governing of the contract by virtue of the principle of “party autonomy” and invoking to the agreed legal system. In spite that, this theory is logical and has had influence in the judicial precedent of Iran, but it is not accepted as the prevailing theory. Also, Article 968 of the Civil Code can no longer meet the requirements of the commercial contract. Therefore, it is suitable and essential, that the legislators consider the principle of “party autonomy” to determine the law governing on the commercial contract as the element of creating easiness and security in the international contractual relationships given the wide international relationships and transactions in the current era.

Key words: Commercial contract, conflict of laws, “Party Autonomy”, the Iranian and French legal system, Article 968 of the Civil Code,

Introduction
Along with the quick developments in the modern world, the trade and commerce relationships and transactions have significantly developed in the international area, between the natural or legal traders with different nationalities. From the other side, the mentioned developments require a change in political policy of the states, as well as the lack of the adequate laws on the commerce laws has led to change the outlook of the legislatures in relation to the legislation and the international conflict settlement rules of the commercial claims. The purpose of conflict of laws is the conflict between the laws that is arising from by the various governments. So, this issue leads to the conflict between two or more laws when an international factor interferes in the issues related to the private rights. The conflict should be resolved for the determination of the competent legislative or the recognition of the competent law at the international level. For the settlement of the law conflict in the international private rights, the Iranian law has enacted the certain laws and rules by inspiration of the French law and by virtue of these rules, any conflict can be resolved by recognizing the legal relationship in question. As it is clear, the exchange of goods and services in the global markets require making the international and commercial contracts. By the presence of a foreign element, the conclusion of such agreements has associated with the rights of the two or more countries which it has led to some problems. Therefore, the question arises that for the settlement of disputes in such contracts, which law relating to the contract can be subject of the aforementioned contract? Or the concluded contract can subordinate of other law by the parties of the contract?
Moreover, other questions come to mind which require the consideration and contemplation about the private international law as well as thinking more about the conflict of laws and finding the available and appropriate solutions for the aforementioned disputes between the parties.

In this paper, we attempt to express generally the conflict of laws in connection with commercial contracts with the international description. Addressing to the special issues that can be outlined about this subject and the assessment of the Iran's legal system are outside of the scope of this article. For this purpose, initially we will have a glimpse to examine the conflict of laws and their concepts, as well as the accepted methods in different legal systems to choose the law governing will be examined. In the second part then, the principle of “party autonomy” and in the third part, some exceptions of this principle will be studied.

General principles of the Conflict of laws

Concept of the conflict of laws

Definition

First time, the expression of the private international laws (Rights) was used by Joseph Story in 1834. But some its subjects and discussion has an ancient history. For example, there was a division of the inhabitants of a country's to the nationals and foreigners in the ancient times. Today's, the technological advances, the transactions speed and the easiness of the commuting have caused that the personal relationships of the people are not limited to a territory of a country and the its citizens and the presence of one or more foreign elements in this relationship lead to addressing the private rights in the international law arena more than before. For example, the increasing development of the international trade has led to branch the international trade law (the set of rules governing on the trade affairs in the international communication) from the international private law. The conflict of laws or the international private law (Droit international privé) is known as the relation of the different juridical and legal ambit between the persons (both terms are used interchangeably) and sometimes to the relationship between the firms and the legal entities that usually, any country has a different verdict to this juridical and legal situation (Adrian, 2008) therefore, in the European countries, the term of the conflict of laws is usually used to refer this branch of law. In other words, the international law is a branch of the international law that precedes the study of the legal rules governing about the relationships between public in the private rights for the international realm and controls all actions related to one law factor of the "foreigner" (Calliess, 2010).

History of the conflict of laws

The first time, the conflict of laws was raised in the Europe in the twelfth century. At this time, due to the business expansion in Italy, the development of the trade ties between its cities with other cities and the existing of the different rules in each of these cities, the possibility of non-local law enforcement was raised and the first school of the conflict of laws was emerged in this century in Italy according to Roman law and annotating it and then other schools were created for the settlement of the conflict problem in other European countries.

In the nineteenth century, the laws unity was realized in the most European countries due to the political sovereignty unit, and by starting the codification movement, the uniform rules were placed instead of the local different habits and the conflict of laws found the international aspects. From then until now, the different schools have emerged to resolve the conflict.

Overview

The internationalization or globalization of the private law relations as the origin’s background of creating the conflict of laws is the conclusion of the differences in the relation factors or otherwise, the dependency of the communication agents in two or more states, for example the difference in the nationality or residence of the parties in a legal relationship causes that the aforementioned difference is assigned to the two States, So that the difference in the nationality of a certain person with his/her residence, leads to have the legal relationship with two respecting States of the aforementioned person and the State related to the residence of the same person. The Difference of the respecting State or the person's residence with the State of the place of conclusion of contract or the place of the obligation performance or “the law of the place where the property is situated” (Lex loci rei sitae) or the court where the thing in-controversy is situated (forum
rei sitae) are other examples for the emergence of the private international legal relationship (Danesh Pajoh, 2012).

The question that arises when dealing with the conflict of laws is that: what the law should be applied in such cases?

The process which is determined by the court that what law must be performed in an international relationship? The court has generally two options for selecting the competent law when faced with the conflict of laws:

1) The court can apply the thing in-controversy is situated (lex foriou Loi du for)
2) The court can apply the place conclusion of the contract (lex loci contractus law” or “Lex Loci delicti law)

The benefits and results of the law selection will be specified when the question arises that which procedural law can be applied?

**The emergence factors of the conflict of laws**

Some conditions and factors are necessary to create the conflict of laws that we will examine them as follows:

1. **The development of the international relationships (economic condition):**

   The issue of the conflict of laws arises when a legal status can be connected to at least two countries. In fact, the conflict of laws cannot be raised without a foreign factor. At a time when the relationship between the people as well as the communications and exchanges of the governments have been developed in the international realm, the creation and development of the conflict have also been spread in the different courts.

2. **The possibility of performing the foreign law and the connivance of the national legislatures (political condition):**

   One of the main reasons for the emergence of the conflict of laws is the connivance of the national legislators in the permanent enforcement of the national legislation, So the judge must attempt for enforcement of the foreign law which is appropriate to the subject of dispute in his/her country. In fact, if the national legislators recognize only the jurisdiction of their country and always adhere to the law enforcement of their respecting country, There is no longer any room for the conflict of laws.

   As the legislator or the domestic legislator with passing the Article 7 in the Iran Civil Code has allowed the foreigners in Iran to comply the national state’s law or their respecting foreign government in terms of their personal status like marriage, wills, competency, age of trading, divorce, personal status matters and adoption.

3. **The difference between the domestic law (legal condition):**

   Another essential requirement to create a conflict of laws is the existing different laws in the domestic rights in relation to two or more countries regarding the legal situation that the judge must recognize the competent law among these different orders and enforce it. Contrary to what happens in the public international law, for example, in the General Assembly of the states that convene together and ratified a convention that is a binding document for all countries of the world.

   The most significant laws that create in the trade disputes as a conflicting manner with each other and the court must choose the competent law between them are as follows: (Underhill, 2009)

   1- The law of the conclusion place where the contract or the legal relationships have been formed.
   2. The law of the place for the obligation enforcement,
   3- The law of the place where the property is situated” (lex loci rei sitae)
   4-The law of the respecting country for the legal entity and the place of the parties’ trade,

**The rules of the settlement of the conflict of the laws based on the different doctrines**

One of the conflicts of rights to deal with the private international law will be a place to recognize the rules of the conflict settlement. However, in this regard, there is not only a uniform procedure in the countries’ approach to determine a criteria for the settlement rule in the conflict of the laws and the substantive settlement method of the claims, but in many cases the legislations are faced with the legal vacuum or the
silence. The purpose of the method of the resolution of the conflict of laws (règles de conflit) is a general theory which, according to its based, the legislator attempts to determine the conflict resolution rules. When a judge is in a position to consider a legal relationship which has the foreign element, It is possible that the aforementioned judge faces with the incompetency of the court place, such as when the two French and Iranian businessmen have made a commercial contract in Germany, but they have sued in England. In such cases, the conflict resolution rules in the private international law system of each country are the guidance for the judges to determine the competent law. But, these rules are not always adjusted in a same way and are different in terms of the performance domination and the type of the connective factor. Therefore, this issue is important in terms of the outlined method, because the attitude way will be different to the conflict of laws problems and the responses that we will provide to them.

Generally, the method of the conflict resolution is examined by the form of one of the two below schools:

**Dogmatic Method (La méthode dogmatique)**

In this approach, it is believed that the private international law depends on the policy of the States and its legal aspects are weak. In general, in this method the policy of the States in the solution of the private international law is considered very influential, therefore the solutions in this method are deductible, so it is not applicable to other lands (Arfania, 2014). This school of thought that emerged in the sixteen century has two famous representatives that are Dumoulin and Duvergier. Dumoulin could achieve to discover some descriptions and Duvergier used the dogmatic method and raised the principle of the subordination of the national laws. But the most effective and the most important adherent of the dogmatic method was Ni Boaye who is a prominent French lawyer. According to Ni Boaye, preserving the interests of the country must be primarily considered, so, the defense of French interests must proceed than everything else. Boyer argued, because France is a country where welcomes to immigrants, So the principle of the subordination of the national laws or the territoriality principle of the laws can protect much better the interests of the French society than the “principle of application of national law to the subject”. One of the most prominent representatives of the French current doctrine is Professor Batiful who believes that both of the national interests of the country and the requirements of the international trade should be considered as far as possible (Saljuqi, 2013). With respect to the assessment of this school, it can be stated that to apply the territoriality principle laws with all its obtained results for becoming pioneers in the application the dogmatic method leads to limit the private laws excessively as well as the lack of efficiency of the mixed laws.

**The Legal Method**

In this method, the issues are examined only in terms of the legal aspect and attempted to find a legal solution and the interests of the country are not particularly considered at all as well as having the justice, intellectual and logical aspects and the political factors have no interference for finding a legal solution. Therefore, in these methods, the solutions are analytical and Universalist, meaning the common concept and the public interest are considered. It means that all solutions are arising from the analysis of the legal issues; therefore, they are applicable in other territories (Arfania, 2014). Pieh, Sarhan and Savini believe that the solution of the conflict rules (règles de conflit) is the Universalist regulation. They believe that the private international law should not be considered as an independent discipline, but it is a part of the public international law and because the public international law is common among all civilized nations; so, the private international law is a part of it, and it cannot be recruited as a national law, but it should have the international aspect (Almasi, 2012).

**Applicable law in the international commercial contracts**

In the contracts, the four major issues are raised that the contractual disputes are one of the issues. They include: Contractual obligations, the formation and validity of the contract, the form of the contract, competency and the status of the contracting parties. Usually, some special laws (although limited and primitive) have been considered for each of these issues for the conflict of law system in the countries in the section related to the contracts. They are issues which can solve the of conflict regulations regarding
the issues. Regarding these issues is resolved. In fact, determining the law is dominative on these issues, so in this respect these regulations are known as the solution of the conflict rules (Nikbakht, 2005).

**Analysis of the international commercial contracts**
The commercial description of the contract: we know that the commercial description of the legal acts is among the issues that have not been agreed by all legal systems and at least three different legal systems are recognizable in this context; Objective System, Subjective system and mixed Objective-Subjective system.

**Accepted system of Iran and France**
Iran and France have followed the mixed objective-subjective system. In this system, the legislator primarily deals with the subjective description of the commercial operations and then describes the traders by determining the commercial transactions and after that some of their transactions are recognized with commercial description for the credibility of the trader. As a result, this system considers not only the subjective description of the commercial operations, but it pays attention to the trader due to his/her commercial transactions. Given the multiplicity of the legal solutions, this question is raised that we should refer to what law for "describing" the commercial description. Should we refer to the law of the forum (Fori) or should we seek the commercial description in the applicable law of foreign. It is now generally accepted, because "the original description" is effective for determining the applicable law, it should be done by the law of the forum (Fori). Now, if a contract is counted as a commercial contract, according to the law of the forum, this question must be answered that the in which cases the principle of “party autonomy” can be performed?

As we know, the principle of “party autonomy” is specified for the case which the legal relationship is considered as a contractual relationship. Thus, according to the law of the forum, the judge must analyze the legal relationship and recognizes it as the contractual relationship examples, and then considers the territory of the principle of “party autonomy” (Iran Pour, 2002).

**Definition of the governing law**
The purpose of the governing (compatible) law is the legal system that creates the contract within its framework and the credibility and influence of the contract have been derived from it. And words and phrases of the contract are interpreted by virtue of it and the performing rights and fulfilling obligations that constitute the content of the agreement are done by them. On the other hand, issues such as impacts, rules, requirements and the responsibilities of the contract regarding the non-fulfillment of the obligation are its subjects and they are the substitute of the will of the parties in cases of the brevity and uncertainty of the contract or the silence of the contracting parties and become the supplement of the law. In the other words, the purpose of the governing law is to determine the legal rules for resolution of the disputes (Samavati, 2010). The governing law of the contracts is defined as the applicable law, competent law or appropriate law. Some lawyers describe it as follows:
The law that the contract has been made by it and generally includes the formation of the contract, the of the contract, the impact of any untrue express, mistake, duress, contract interpretation and correctness or incorrectness of the contract conditions, to meet the duties of the parties’ contract and somewhat the legitimacy of the contract (Lundie, 1993).

**Governing law in the contracts by virtue of law**
In a historical review of the private international law or the conflict of laws in different countries and the opinions of scholars and Legal writers, we can observe that three prevailing theory that had outlined in the past regarding the governing law in the contract. The law governing of the place of conclusion of contract, the law governing of the performance conclusion, the law governing of the respective country, in fact, these theories have made somehow the provisions of conflict of laws related to the contract in different countries and each one has become a regulation. Each country has accepted one of these theories that has recognized as a better theory with its own specific analysis and considering the political motivations or the gravity
center the contract and the business atmosphere of the contract is made by the parties in it. Although the acceptance of one of these theories leads to a better prediction of the contract conditions and a greater stability and certainty can be prevailed on the contract, but there is no room for the independence of the “party autonomy” principle of the parties. Until the nineteenth century, the contracts were under the rule of the civil law in most legal systems which were formed or performed in that place. In fact, the commencement of the private international development was in the eighteenth century and early nineteenth century, and now the law governing of the place conclusion of the contract formally codified in the legal systems of the world.

**Governing law in the contract of Iranian and French law**

The influence of the principle of the dominion of the will is so much, so that even if the parties have not used this right and the applicable law of contracts and have not determined either explicitly or impliedly, the lawmaker or judge tries to find their presumed will on the competence of the special law. Usually, such this research concludes to enforcement of the law in the place of conclusion of the contract or the performance of conclusion of the contract. Therefore, when given the above subjects, the presumed will of the parties become indistinguishable for the judge at all, according to accepted rules of the Iran and France law; the law in the place of conclusion of the contract is enforceable and know the presumed will of the parties for enforcement of this law. In French, according to the classic view law of contract, the law in the place of conclusion of the contract is known as the law governing of all issues related to the contract. In Iran, the contract is subject to the place of the contract (lex loci contractus) by virtue of an old rule, unless, the parties recognize it as subject to other law (Shariat Bagheri, 2012). This rule is stated explicitly in Article 968 of the Civil Code: Obligation arising out of contracts subject to the laws of the place of the performance of the transaction except in cases where the parties to the contract are both foreign nationals and have explicitly or impliedly declared the transaction to be subject to the laws of another country. But according to this issue that after the offer and as soon as the other party accepts it, the transaction is conducted, in the case of the contract in the form of correspondence and the place where a contract is made, there will be a fundamental problem that the laws of the different countries in terms the time of conclusion of the contract is various and these countries recognize the contract, after the offer and at the time of the acceptance receipt by another party.

**The principle of the Party Autonomy**

As it is specified, nowadays, the principle of the “Party Autonomy” is more common in the international trade and business relationship due to the increasing development of the trade between the international traders (Shahidi, 1998). The fundamental of the party autonomy principle is the respect for the human dignity, namely that the appearance of the perfect human character is subject to freedom of his/her will and according to many supporters of the party autonomy, the law must only prevent the conflict between the free wills to avoid the corruptions and the collective interests should not be sacrificed by the freedom of the Individual will. Practically, only the creation of the balance between the social interests and the individual liberty is possible and operation performing is the responsibility of the law (Organi, 2002). Therefore, by virtue of the party autonomy principle, parties of a contract can choose any law that they wish for their contractual relationships. The aforementioned law can be the law of the exporter’s country (seller) of goods, or the law of the importer’s country (buyers) of goods or the law of the neutral third country (such as Switzerland and Sweden). Often, the law of a third country is selected because the contract is quite advanced in a particular area, on the other hand, with addressing the transference mechanism that applying of it requires to refer to the entire designated foreign legal system by the venue law, namely the set of legal principles of the conflict solution and the material rules of the foreign country are material and with regard to its acceptance by many legal systems of the world, the Rome Regulation has accepted the principle of choice in the widest possible form. Because the clauses of the 3 and 4 of this Article allows the parties for governing the law of each country in their contract that would like to, provided that the observation of the mandatory rules in the related country, even if the chosen country has not relation the contract. The agreements which the parties by virtue of them choose the set of non-governmental provisions such as the
principles of the international commercial contracts and have accepted in the explanatory memorandum of the number 13 in the Rome Regulations are not considered as the law governing the contract which must be necessarily a national law, rather they should be seen merely as an integration through the assignment (Gutmann, 2009).

The principle of the party autonomy in Iranian law
In regards to the principle of the party autonomy in the Iranian law, the Article 968 of the Civil Code has been regularly as a document for the Iranian courts in cases of the contracts that a foreign element has involved in the contracts (international contracts) as one of the conflict of laws rules relating to contracts and as only Article related to the obligations arising from the contracts since the adoption of it in 1934 until now. Also, when a dispute related to an international trade agreement is referred to a court, it is necessary that the arbitrator imposes the rule of the conflict resolution of the Iranian legal system, and the same Article 968 rule should be applied. Some believe that this rule has been inserted in Iran law by the legal system of France. Although apparently this Article has not a major difference with what exists in other countries, but in practice, it has dramatic differences with other legal systems which the rule is such that the contract is subject to the place of conclusion of the contract, unless the parties choose another law for it explicitly or implicitly (Nikbakht, 2000). However, Article 968 of the Civil Code has accepted the born of the will of the parties for choosing the governing law, only if it is a foreign national. The decree of the legislator is faced with the major challenges, on the one hand, between Iranian citizens and foreign nationals has been made an inadmissible discrimination, and on the other hand, it is not clear why the two Iranians should not be able to choose freely the law governing the contract in other countries (Bakhtiyarvand, 2012).

Party autonomy principle in French law
Dumoulin, who was a French lawyer in the 16th century, is known as the originator of the party autonomy theory in Europe. He believed when the parties can agree with each other by their own will and make a contract, the legal logic necessitates which any law that is recognized by them as a more appropriate law can be as the law governing the contract (Dumoulin, 1950). In French law, the party autonomy was firstly proposed by the Supreme Court of France, on 5 December 1910 by the decision in the case of “American Trading Co”: “The law governing the contract, the forming, the conditions and their effects is a law that the parties have chosen” (Mayer, Heuzé, 2007). Later, the draft law of 1967 confirmed the mentioned above idea that had been jurisprudence in the French to complete the Civil Code in subjects of the private international law in the first paragraph of Article 2312. This paragraph had decreed: the contracts with international character and the arising from them will be subject to the law which the parties intended to admit themselves under the rule of it (Batiffol, Lagard, 1976). Although a long delay and stop were created to recognize of the principle of the party autonomy in France and some writers criticized it, but later that this principle was accepted, the decisions of the France's Supreme Court showed that the judges believed when the interests of the international trades are addressed, the choice of the law by the parties is acceptable, even there is no the relationship between the choice of the law and the contract (Chassar, 1884).

Exceptions in the principle of the party autonomy
However, the parties can freely determine the law governing the contract, but the principle of the party autonomy has not the absolute valid and the freedom of the individuals are limited to contract and determine the condition of its effects. Some important exception which can be outlined for this principle in the different legal systems including Iran and France:

1. Conflict to the public order and good morals
Providing a precise definition and determination is difficult for single criteria for the public and moral order. As we know, the concepts of the public order in the Islamic governments of Iran and the Romano-Germanic of the France is somewhat different, for example, to contract for purchase and sale of the alcoholic beverages with Iranian businessmen is not opposite with the public order or good morals In France, but from this side of the business transactions on the alcoholic beverages or the gambling tools is quite contrary to the good morals and the public order in the Islamic republic of Iran as well as such deals are unlawful
and void and cannot be addresses as a lawsuit. So nowadays, the concept of the public order according to a vast majority of legal scholars and by virtue of the laws in most countries, not only is considered as a principle, but it is as an exception for the enforcement of the foreign law. The Article 975 of the Iranian Civil Code also refers to this issue (Ebrahami, 2016). Also in the articles of the Civil Procedure Code Iran and in Article 6 of the Civil Code has been expressly mentioned that the private agreements must not be contrary to the public order and good morals. For these reasons, the public order and good morals are the common concepts in all legal systems including in Iran and France laws. About the necessity of the lack of conflict of the contract with the public order, it should be said that from the perspective of the Islamic religion to protect the community system is necessary and the most important task regarding the economic system and the legal system generally and other systems which the human social life depends on it, because in the Muslim community, the moral codes arising from the Islam religion are part of its rules and regulations. Thus, according to the above definition, the traders cannot agree to make the commercial contracts by the rules that are directly related to the social interests and the public order in the country of conclusion of the contract (Safai, 1392).

2. Conflict with the mandatory rules
The influence of the party autonomy cannot opposite with the mandatory rules of a country where the parties agree about it. In fact, however, the contract rights in the aforementioned two countries demand that the parties to abide for their contractual agreements, and recognize it enforceable and they must remain constant it. Since the respective states of the parties try to protect their subjects, especially the weaker party, they cannot impose the equivalent will of the stronger party. For this reason, the lawmakers have limited the influence of the party autonomy for the conflict with mandatory rule. The Article 10 of the Civil Code after the acknowledging of the party autonomy principle, has obligated its radius to the explicitly opposite with the law (Shariat Bagheri, 1391).

Fraud to the law
According to this theory which is acceptable for most legal systems in the world, the contract that has made fraudulently and for bypassing the law is devoid of any legal effect. So if the parties of the contract determine the choice and governing law of the contract with the fraud, the contract will be cancelled according to this theory. Should not be assumed, that the parties are free to choose the law governing the contract. So they can determine the set of the contract law with any excuse or reason, because, the fraud can make void any operation. On the one hand, if the parties choose some objective elements of the contract fraudulently, for example, because the Iranian law in the Article 968 recognizes the contract subject to the place of conclusion the contract law, the parties choose the place of conclusion of the contract in a foreign country to evade of the law, this choice is without effect, but if designating the foreign country is not to evade of the Iranian law and for the fraud, the contract, according to the assumption is subject to the law of the foreign country.

Conclusion
There is no doubt that increasing the international commercial transactions as well as the need of the export and import of goods to advance the economic goals require the contracts between the traders and businessmen. Therefore, it is normally that after the agreement on the enforcement of the contract and obligations arising from it, some disputes were created. But on the one hand, the settlement of these disputes with a foreign element leads to challenge the entire legal system and the conflict of law issue comes to focus. Eventually, the judge of the court where the thing in-controversy is situated (forum rei sitae) should attempt to solve the conflict of laws problem as a guardian of the legal and social system by resorting to the integrity of the system that the private international law offers to him/her. Therefore, according to the results of this study, the Iranian and French judges consider basically applying the governing law of the place of conclusion in facing the settlement of the disputes between the traders regarding the international contracts, unless the parties have agreed with each other accordance with the party autonomy principle of his/her respective country or a third country. Historical development of the private international law in the context of the commercial agreements confirms the freedom of choosing the relevant and real law. The French legal
system gives more value to the party autonomy principle under the influence of the Rome Convention. In
the Iranian law, the Principle of freedom of the party autonomy in determining the applicable law about
the contracts, after the state of the place of conclusion law in Article 968 of the Civil Code and stipulate with
a defective reflection by this phrase: “Except in cases where the parties to the contract are both foreign
nationals and have explicitly or impliedly declared the transaction to be subject to the laws of another
country.” As it is clear from the style of the phrase and the history of the discussion in the parliament, the
purpose of the legislator from the mentioned phrase is that only the foreign nationals allow to choose
another law other than the applicable law of the place of conclusion. Because at the time of the above
Article adoption, perhaps the Iranian traders were not familiar with the laws of other countries and there
was the possibility of the abuse of foreign traders when dealing with the Iranian, hence, the Iranian
lawmakers passed this Article to support the Iranian traders. But nowadays, due to the development of
communication and a higher level of knowledge in the people as well as the availability of the expert
lawyers and consultants in the field of the international trade law and especially the development of diverse
and valuable international’s contracts between traders, it is essential that below of Article 968 be amended
by the legislatures and give more freedom to the Iranian traders regarding the making contract. Because
it is clear that Article 968 makes the Iranian contracts are made less in Iran and the parties of the contracts
will try to make their agreements in a foreign country to govern the desired law or they try insert with bother
the rules of their desired foreign law.

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