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# The Relational Contracts in the International trade: Un Approach from Private International Law

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**Abstract**

Performing complex transactions is becoming more frequent in modern international commercial relationships. These transactions are commonly structured through a diversity of contracts, which maintain their own autonomy each other, but simultaneously they are connected by pursuing all of them the execution of a united economic purpose. The expressions «chain, groups, networks, etc. of contracts» refers to an increasingly important reality in the commercial area and, particularly, in the international environment, whereby independent legal transactions present a unity in their purpose that allows to consider that they belong to the same transaction

**Keywords:** Complex transactions; Commercial relationships; Mixed contracts; The legal independence

## Introduction

In contrast to mixed contracts, defined by the existence of a single contract with complex case, relational contracts maintain the legal independence between them (i. e., each has its own consideration), but they are connected by the same economic purpose. While the contracting party (party autonomy) is the responsible of the design of the transaction structure projected through a contract with complex consideration or relational contracts, sometimes the legislator shapes the relationship in advance, pointing out that this is a mixed contract (e.g., a package travel contract) or there is a majority position in jurisprudence and doctrine by considering that the transaction takes shape through a variety of relational contracts (e.g. leasing).

In addition, the structure of the financial transaction makes sometimes desirable to maintain the legal independence of the contracts, particularly, given its high complexity, on the one hand, and the variety of individuals involved in each of the relationships, on the other hand. However, it is not possible to establish a single category to which relational contracts belong, but there are several manifestations of the relationships established between the different contracts which constitute a single financial transaction. While different names are used to designate the forms of connection between contracts (necessary, generic, voluntary, functional, etc.), all of them highlight the existing relationship between the business impacts that constitute a financial transaction. This is the called functional connection.

This functional connection has resulted in the breach (to a certain extent) of the privity of contract principle, according to which "res inter aliosactaaliisnequenocerenequeprodessepotest". Such principle was enshrined in most of the 19th century Codes, including the French Civil Code of 1804 (Napoleonic Code), where art. 1165 provides that: "les conventions n'ontd'effetsqu'entre les parties contractans; elles ne nuisent point aux tiers etcelle ne luisprofitent que dans les casprévus à l'article 1121 », which influenced subsequent codifications. Additionally the art. 1257 of the Spanish Civil Code of 1889 states that: "loscontratos solo producenefectos entre las partes que losotorgan y sus herederos". The same idea is also expressed in common law scope through the doctrine of the privity of contract, in such a way that a contract cannot confer (grant) rights or impose obligations upon any person with the exception of the parties that have signed it.

While commonly pointing out that this principle means the recognition of the party autonomy, it is just one of the possible interpretations in accordance with one of the postulates of liberalism, which has nothing to do with its historical roots (particularly, from Roman law), and therefore allows an exegesis of this principle in line with the new contract drafting. This new function requires that the contract should not only ensure the economic equilibrium between the parties, but should also enable them to anticipate the result of their actions, thus making it necessary to develop a security and confidence environment.

Consequently, the binding force of the contract is not deriving exclusively from the party autonomy, but from the attribution of legal effects by the law to the agreement between the parties, in response to a "social interest" (social function) which allows to build "relationships" between the contracts that belong to the structure of the same transaction desired by the parties, without the purpose of which they would not have concluded such legal business. Thus, the economic equilibrium pursued by the parties is not only valued with respect to a specific contract, but regarding all the contracts connected or linked to the same transaction.

I.e. In German Law, Art. 139 (Teilnichtichkeit) of the Bürgerliches Gesetzbuch provide that: "is einTeileines Rechtsgeschäfts nichtig, so ist das ganze Rechtsgeschäfts nichtig, wenn nichanzunehmenist, dassesauchohne den nichtigen Teilvorgenommen sein würde". In the case of common law systems, certain changes are being experienced against the rigidity of doctrine of "privity of contract", not only by a shift in jurisprudence but also in legislation. Although it might become more difficult that the breach of the privity of contract principle will be accepted as a result of the strict understanding characterizing these regulations with regard to the position of third parties, outside the context of the agreed conditions, examples of the involvement of third parties in the contract could also be found, either via the business itself in favor of third parties (following the entry into force of the Contracts-Rights of Third Parties- Act of 1999), or via the reception of Community rules of origin (as happens, in particular, in the case of consumer contracts), or via the reception of Community rules (as in the case, particularly, of consumer contracts).

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In fact, the legal systems of European Union countries should transpose Community law, taking the connection between contracts into consideration as a presupposition from which a range of effects is derived. An example is the art. 4 of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.On the other hand, the art. 2 of the Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, refers to the groups of contracts. Its art. 7 regulates specifically the effects it had the termination of the loan agreement on the timesharing contract.

The objective is not intended to analyze or define the elements that would allow to consider that a specific international transaction is articulated through a single contract with mixed consideration or through a diversity of independent contracts, but rather it is based on the existence of connected contracts in order to determine how to respond to the relationships established between them in modern International trade law. This implies analyzing and proposing solutions to the questions raised by the existence of this type of transactions in international commerce (e.g. what legal system indicates whether the invalidity or breach of one of them impacts on the other and, if so, how).

The delimitation of the scope of application of legal orders present in the case of relational contracts has not only a great theoretical importance but also a practical significance. Its resolution must follow the interpretation of the whole legal transaction (in accordance with the aforementioned connection between the contracts) and depends on the specific type of legal effect or legal impact (in question).

It is considered that such connection must be assessed by the judicial authority on a case-by-case basis and, to that end, the objective connection (necessary) should not be enough, but the subjective element should also be taken into consideration. Both constitute canons for the interpretation of the contract contained in almost all legal orders, without prejudice to the preference given to one or other in each case. However, these criteria (objective and subjective) are not enough, but the parties' behavior at the time of drawing up the contractual framework must also be assessed according to the general principle of good faith (subjective), which acts in the field of International commercial law regardless of the application of a specific regulation to the contracts that constitute the international financial transaction.

The connection between contracts must be taken into consideration by the legal order as a presupposition to describe the business relationship, without resorting to the traditional subsumption procedure in the type of contract, since this connection is prior and must not be addressed by the legal order by resorting to the classic conception of typification of the contract but requires a new understanding of the cause which is also evident in the system of Private international law.

Cases which allow knowing the complexity of the legal issues raised by relational contracts in current international commerce will be presented. Such cases have been taken from the jurisprudence to highlight the range of situations requiring a legal response which has not yet been given in all cases. The financial leasing transaction is a good example of contractual diversity and economic unity. At the present time, tripartite relationships between different parties composing the relationship are channeled through legally independent contracts, but connected each other.

In relation to a case brought before the Barcelona Court of Appeal (section 15) of 25 May 1994 concerning an action for breach of payment obligation for the goods by the Spanish leasing company, the doctrine has pointed out that the American law (governing the contract of sale) should determine the consequences of breach of buyer's obligations (leasing company). On the other hand, the governing law of the contract of financial leasing would have to regulate the possible liability of the leasing company before the end user. More specifically, two questions were raised, which legal system determines the consequences of the breach of payment obligation for the helicopters by the leasing company and, secondly, what impact (effects) the breach of the contract of sale has on the contract of assignment.

On the other side, the possibility that final consumer exercise a direct action against the manufacturer or producer involved in the product chain is not only becoming increasingly frequent, but also raises interesting questions in international commerce, particularly, in the area of consumption (but not exclusively). It is necessary to know what regulation governs the possibility that end user acts against the producer or manufacturer, with whom he does not have a contractual relationship [1-12].

At the present time, the connection between contracts is a legal base for Law, that is to say, a typical structure in which the legal agent can assess the existence of relationships between contracts, from which a set of consequences may be inferred and also a specific legal business may be qualified. On the other hand, regardless of whether they are signed or not by the same parties, all the parties involved can have this treatment (both formally and substantially) with respect to the whole economic transaction. The questions raised by a direct action in international commerce law just from the recognition, which is increasingly frequent in domestic legal orders, of a contractual action by the final user or consumer against the manufacturer or producer despite the absence of a contract between them.

## Conclusion

The international trade Law starts to channel their own needs to give a specific response to the connection between contracts. However, such solutions are not found in all cases, nor uniform Law needs (how they are determined) the effects that this connection has on the contracts. For example, the Uniform Customs and Practice for Documentary Credits formulated by the International Chamber of Commerce do not qualify this transaction (documentary credit), but the legal regime they design for documentary credit must be compared with the categories of national legal systems.

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