
Academic Article Review

Article Name: “A Tie That Binds: Forum Selection Clause Enforceability in West Virginia”

Author: J. Zak Ritchie

Source: West Virginia Law Review, Volume 113, 2010: 95-132.

Reviewed by Artit Pinpak*

An article “A Tie That Binds: Forum Selection Clause Enforceability in West Virginia” was published by the West Virginia Law Review in the year 2010¹, five year after the ‘2005 Hague Convention on Choice of Court Agreement’ had come into force and two years before the ‘Choice of Court Agreements Convention Implementation Act’ had been adopted by the (US) Uniform Law Commissioners in 2012. The author of this, J. Zak Ritchie, is a J.D. Candidate of West Virginia University College of Law.

This article composes of two main parts. The former part deals with the background and evolution of Forum Selection Clause (“FSC”) in the United States and in the state of West Virginia (“WV”) before *the Caperton* case². The latter part deals with the factual background of *the Caperton* case, FSC Enforceability Test employed by the WV Court, and also the rebuttable factors which can occur during the court consideration.

* Full-time lecturer, Graduate Studies, AU School of Law; JSD Candidate (Chulalongkorn University); LL.M. (University College London, the UK); LL.M. (Chulalongkorn University); LL.B. (Assumption University); Certificate of Law Teacher (Faculty of Laws, UCL, the UK).

¹An electronic version of this article is available at <http://wvlawreview.wvu.edu/r/download/77156>

² *Caperton v. A. T. Massey Coal Co.* 129 S. Ct. 2252. W. Va. (2009)

The author starts his work with the definition and significance of the FSC in today's commercially-driven world with the wide support of the cases around the frontier of 1980s and 1990s. After that, he showed the changing perspective of the US Court which appeared in two US Supreme Court milestone cases in FSC issues, viz. *the Bremen*³ and *the Shute*⁴ cases. He also supported his argument that many state courts positively reacted to the posterity of the two aforementioned US Supreme Court landmark cases by several treatises put in writing during 1984 and 1993.

Then, in Part III of his article, he put his emphasis on the WV *Carperton* case, starting from narrating the background and development of the case. Besides cases, the author also cites the United States Code⁵ and the Common Law Doctrine of *forum non conveniens* in his analysis. He continued his article with the most highlighted part in subsection D under this Part III, “The *Carperton* Enforceability Rubric: A Four-Part Analysis”. He has mentioned four questions which the court will interrogate during the trial 1) Was the FSC reasonably communicated to the party resisting enforcement? 2) Is the FSC Mandatory or Permissive? 3) Are the claims and parties involved in the case governed by that FSC? And 4) Is there any rebuttable factor of the presumption of FSC enforceability? These points of the test were originally adopted from the Fourth Circuit Court⁶, not originally became the precedents by the court of WV herself.

Finally in his work, he ends his article by pointing out that the FSC lawfully and mutually agreed by and between parties in commercial contract was able to be enforced

³ *The Bremen v. Zapata Off-Shore Company*, 407 U.S. 1 (1972)

⁴ *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991).

⁵ The United States Code Title 28 Part IV Chapter 87 §1404-Change of Venue and §1406(a)-Cure or Waiver of Defects

⁶ The US Courts of Appeal (the Circuit Court) is one of the US Federal Court System. All District Courts of WV subject to the US Courts of Appeal for the Fourth Circuit. Thus, all of the judgments of the US Fourth Circuit Court contain the binding affect over the Supreme Court of Appeals of the West Virginia State —the highest court in the state (by the reviewer).

in the state of WV provided that the clause can fulfill the test or the Four-Part Analysis adopted and applied by WV courts.

As an expository article, the objective of the author that he wants to explain the sequential questions asked by the court to test the validity of FSC in a contract is accomplished. The author aimed to explain the changing environment and development of the legal principles on the FSC, appeared in commercial contracts. These changes affect the jurisdictional issue all over the US.

The method of presenting argument is traditional according to the Common Law legal system. The author used court hierarchy (the US Supreme Court → the US Courts of Appeal for the Fourth Circuit → the Supreme Court of Appeals of the West Virginia State) to explain authority of case law and legal principles derived from the landmark cases of the US Supreme Court. Those cases together with academic articles from several acceptable law journals and law reviews were used as the evidences to support his explanation throughout the article.

Readers are recommended to browse quickly on the rigid definition of “Choice of Court Clause” or “Forum Selection Clause” and case summary of the *Breman* and the *Carperton* cases. And in order to further your insight and interest, the 2005 Hague Convention on Choice of Court Agreement and the approved text of the Uniform Choice of Court Agreement Implementation Act, with comments from the drafters, are quite informative.

As I mentioned earlier that this article was written prior to the enactment of the ‘Choice of Court Agreements Convention Implementation Act’ by the Uniform Law Commissioners of the US; thus, by now, the WV state may straightforwardly implement such Implementation Act and use it as the statutory law of the state. It is clear that this Act was intended to be used for the international legal relationship (dispute with internationality), not for a domestic dispute which all element related in the case indicate to only one jurisdiction; thus, should the state of WV adopted this Act, this kind of expository argument in this article might not be highly required.

In conclusion, syntax of this work is high-quality. Even though this article does not contain an arduous legal theory or a knotty thesis, this article yields benefit in exemplifying law students how to test their own understanding whether you

undoubtedly comprehend an individual topic lectured or discussed in your class. Law students can use this article as a preliminary example when they want to start their own academic works since the language used, approach to the thesis and argument structure are not obscured. This article might be a stepping stone for the ‘new-face’ in legal academic writing.