

**Session of Dijon - 1981**

**The Problem of Choice of Time in Private International Law**

*(Twenty-fourth Commission, Rapporteur : Mr Ronald Graveson)*

*(The English text is authoritative. The French text is a translation.)*

*The Institute of International Law,*

*Recalling* the Resolution on the Intertemporal Problem in Public International Law adopted at its Wiesbaden Session in 1975 ;

*Noting* that certain problems of time in private international law differ from those in public international law ;

*Considering* it desirable accordingly to propose appropriate solutions to the problem of time in systems of private international law generally ;

*Considering* that the application of the following principles will facilitate the achievement of just and equitable solutions ;

**I**

*Adopts* this Resolution :

1. The temporal effect of change in a rule of private international law shall be determined by the legal system to which that rule belongs.

2. The temporal effect of changes in the facts that constitute the basis for assuming jurisdiction or for selecting the applicable law, whether such changes result from the action of a natural or legal person or from that of a legislative, judicial or executive authority, shall be determined as follows :

a) changes during the course of the proceedings in the facts that constitute the basis for assuming jurisdiction shall not deprive a court of its existing jurisdiction or normally affect the recognition or enforcement of its judgments in other States ;

b) in the case of changes in the facts that constitute the basis for selecting the applicable law, by applying that law, from amongst those under consideration, the application of which corresponds most closely to the objectives of the forum's system of choice of law.

3. The temporal effect of change in the applicable law shall be determined by that law.

4. The legal relevance of facts occurring before or after the legally decisive event, except in so far as relevant for the purposes of assuming jurisdiction or of choice of law, shall be determined by the applicable law.

5. The effect of retrospective legal provisions, whether legislative, executive or judicial, should normally be determined by reference to the legal system in which they originate.

6. Particularly in continuous legal situations of personal status, property or obligation, personal status established and rights acquired before the happening of a relevant change of law should be protected so far as possible.

7. In any case in which, on the occasion of regulating the conflict in time, the effects of a legal situation may be subjected to a law different from that applicable to the conditions of its formation, the solution adopted should take into consideration the need to ensure continuity and cohesion of the total regime of the situation under review.

## II

*Recommends that :*

In order to avoid any cause of uncertainty or dispute, every international instrument or statute relating to matters of private international law should include provisions indicating the solution that ought to be given to such problems of applicable time as might arise in the course of its application.

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(29 August 1981)