

## Jurisdiction Conflicts in Contracts of International Maritime Transport: The Application of the Forum Selection Clause in Brazilian Courts

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**Abstract :** The world walks to be ever more globalised. This trend promotes an increase on the number of transnational commercial transactions. The main modal for carriage of goods is by sea, and many countries have their economies dependent on the maritime freightage - it could be because they exercise largely this activity or because they follow the tendency of using the maritime logistic widely. Among these ones, Brazil is included. This nation counts with sixteen ports with good capacities, which receive most of the international income by sea. It is estimated that 85 per cent of the total influx of goods in Brazil is by maritime modal, leaving mere 15 per cent for the other ones. This made it necessary to develop maritime law in international and national basis, to create a standard to be applied with the intention to harmonize the transnational carriage of goods by sea. Maritime contracts are very specific and have interesting peculiarities, but in their range, little research has been made on what causes the main divergences when it comes to international contracts: the jurisdiction conflict. Likewise any other international contract, it is common for the parties to set a forum selection clause to choose the forum which will be able to judge the litigations that could rise from a maritime transport contract and, consequently, also which law should be applied to the cases. However, the forum choice in Brazil has always been somewhat polemical - not only in the maritime law sphere - for sometimes national tribunals overlook the parties' choice and call the competence for themselves. In this sense, it is interesting to mention that the Mexico Convention of 1994 about the law applicable to international contracts did not gain strength in Brazil, nor even reached the Congress to be considered for ratification. Furthermore, it is also noteworthy that Brazil has a new Civil Procedure Code, which was put into reinforcement in 2016 bringing new legal provisions specifically about the forum selection. This represented a mark in the national legal system in this matter. Therefore, this paper intends to give an insight through Brazilian jurisprudence, making an analysis of how this issue has been treated on litigations about maritime contracts in the national tribunals, as well as the solutions found by the Brazilian legal system for the jurisdiction conflicts in those cases. To achieve the expected results, the hypothetical-deductive method will be used in combination with researches on doctrine and legislations. Also, jurisprudential research and case law study will have a special role, since the main point of this paper is to verify and study the position of the courts in Brazil in a specific matter. As a country of civil law, the Brazilian judges and tribunals are very attached to the rules displayed on codes. However, the jurisprudential understanding has been changing during the years and with the advent of the new rules about the applicable law and forum selection clause, it is noticeable that new winds are being blown.

**Keywords :** applicable law, forum selection clause, international business, international maritime contracts, litigation in courts

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