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Summary

Revaluation and Devaluation in Private International Law

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I. The foreign currency risk:

1. This risk is, al least under a system of floating exchange rates, an every-day-affair. To a great extent, it can be anticipated and provided for by specific economic means.
2. The appreciation or depreciation of any currency being expressed in relation to another given currency, it is difficult to attribute the appreciation (depreciation) or part of it specifically to either currency.
3. Very often such relative appreciation or depreciation by and large corresponds to the difference in inflation rates between the two countries. Then, reference to the stronger currency has the effect of minimizing debtor's gains and creditor's losses due to inflation.

II. Lex causae – law of the currency – territorial approach:

1. As to the legal treatment of the foreign currency risk, the principal question is not the applicability of foreign currency law but rather the choice and the application of the lex causae.
2. In the most common case of a contractual relationship and a monetary obligation precisely expressed in a given currency, the legal answer to the foreign currency risk is universally accepted: The law does not interfere with the risk distribution agreed upon by the parties. Any discussion of legal remedies, therefore, can reasonably concern exceptional cases only.

III. The lex causae:

1. By denominating the currency of the obligation, the lex causae distributes the foreign currency risk. This is true, in particular, in case of ambiguous party agreements and non-contractual relationships.
2. The valorization of certain debts (in favor of the creditor) either eliminates the foreign currency risk or transfers it to the debtor. Damages for delayed payment may have the same effect.
3. The nominalistic principle normally is extended to foreign money obligations as well. This point of view is not necessarily convincing; at least an orientation towards the stronger currency might be taken into consideration – depending on the merits of the individual case.

IV. The law of the currency:

The law of the currency comes to bear in cases of an alternation of the monetary system only: problems of the „recurrent link" and of revalorization.

V. Contractual disposition of the foreign currency risk (choice of the currency, currency clauses):

1. The law governing these questions is the lex causae. Special statutory provisions such as § 3 of the German Currency Law, however, may claim authority beyond the scope of the proper law.
2. In substance, the potential value of currency clauses as a means of furthering a more adequate distribution of the foreign currency risk deserves legal recognition.

VI. The conversion of foreign monetary obligations:

1. Such conversion – which may take place for various reasons – affects the distribution of the foreign currency risk if the rate of conversion is not based on the date of actual payment.
2. For the law governing conversion see supra V 1.

VII. Interest analysis in applying foreign substantive law and in determining the proper law:

1. The methods of interest analysis established in domestic law are valid, in principle, for the application of foreign law as well.
2. In the field of currency law, where the intrinsic connection between private international law and substantive law is obvious, interest analysis as the method of making substantive law decisions can easily be extended to choice of law questions not resolved by unambiguous conflict of law standards (i.e. a somewhat scaled-down version of the so-called „better law approach").