

Place of business, subparagraph (a)

2. Subparagraph (a) deals with the situation in which a party to a contract has more than one place of business. The question arises in this Convention in respect of a number of different matters.

3. First, the determination of the relevant place of business may be important in determining whether this Convention applies to the contract. For this Convention to apply, the contract must be between parties whose places of business are in different States.¹ Moreover, in most cases those States must be Contracting States.² For the purpose of determining whether this Convention applies no problem arises where all the places of business of one party (X) are situated in Contracting States other than the Contracting State in which the other party (Y) has his place of business. Whichever one is designated as the relevant place of business of X, the places of business of X and Y will be in different Contracting States. The problem arises only when one of X's places of business is situated either in the same State as the place of business of Y or in a non-Contracting State. In such a case it becomes crucial to determine which of X's different places of business is the relevant place of business within the meaning of article 1.

4. The determination of the relevant place of business is also necessary for the purposes of article 11, 18 (2), 22, 29 (c), 40 (1) (b), 53 (1) (a) and (X). In the case of articles 18 (2), 22, 29 (c) and 53 (1) (a) it may be necessary to choose between two places of business within a given State as to choose between places of business in two different States.

5. In addition, article 81 (2) provides the rule in respect of passage of risk of loss when "the buyer is required to take over the goods at a place other than any place of business of the seller . . ." In this case it is not necessary to determine the relevant place of business under article 9.

6. Subparagraph (a) lays down the criterion for determining the relevant place of business: It is the place of business "which has the closest relationship to the contract and its performance." The phrase "the contract and its performance" refers to the transaction as a whole, including factors relating to the offer and the acceptance as well as the performance of the contract. The location of the head office or principal place of business is irrelevant for the purposes of article 9 unless that office or place of business becomes so involved in the transaction concerned as to be the place of business "which has the closest relationship to the contract and its performance."

7. In determining the place of business which has the "closest relationship," subparagraph (a) states that regard is to be given to "the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract." Therefore, when article 9 (a) refers to the performance of the contract, it is referring to the performance that the parties contemplated when they were entering into the contract. If it was contemplated that the seller would perform the contract at his place of business in State A, a determination that his "place of business" under article 9 (a) was in State A would not be altered by his subsequent decision to perform the contract at his place of business in State B.

8. Factors that may not be known to one of the parties at the time of entering into the contract would include supervision over the making of the contract by a head office located in another State, or the foreign origin or final destination of the goods. When these factors are not known to or contemplated by both parties at the time of entering into the contract, they are not to be taken into consideration.

Habitual residence, subparagraph (b)

9. Subparagraph (b) deals with the case where one of the parties does not have a place of business. Most international contracts are entered into by businessmen who have recognized places of business. Occasionally, however, a person who does not have an established "place of business" may enter into a contract of sale of goods that is intended for commercial purposes, and not simply for "personal, family or household use" within the meaning of article 2 (a) of this

Article 9

[Place of business]

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

PRIOR UNIFORM LAW

ULIS, article 1 (2).

ULF, article 1 (2).

Prescription Convention, articles 2 (c) and (d).

Commentary

1. This article deals with the determination of the relevant "place of business" of a party.

¹ Article 5.

² Article 7 provides rules for the interpretation of statements made by and other conduct of a party.

¹ Article 1 (1). See, however, article 5.

² Article 1 (1) (a).

Convention. The present provision provides that in this situation, reference is to be made to his habitual residence.