

## **THE PRINCIPLES OF EQUALITY AND MUTUAL BENEFIT IN PRIVATE INTERNATIONAL LAW**

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*This article mainly studies an important principle among the principles of private international law: the principle of equality and mutual benefit*

The principle of equality and mutual benefit is a cornerstone of modern private international law. Its essence is that in international civil and commercial interactions, all states and parties involved have equal status, and the outcomes of legal choices must balance the interests of all.

“Equality” is reflected in two aspects. First, equality of subjects, meaning foreign and domestic parties have equal legal status and enjoy reciprocal rights and obligations, embodying national treatment. Second, equality of laws, meaning domestic law and foreign law hold equal status before conflict rules. If a conflict rule refers to the application of a foreign law, that law must be respected and applied on an equal footing with domestic law.

“Mutual Benefit” also encompasses two points. First, safeguarding reciprocal interests, ensuring that the application of law is fair and protects the rights and interests of all parties, thereby promoting long-term, stable cooperation between states and achieving “win-win” outcomes. Second, establishing reciprocal relations, where judicial cooperation between states is premised on mutual benefit, creating a virtuous cycle of mutual facilitation.

The principle of equality and mutual benefit is not an abstract concept; it is translated into specific systems and rules within private international law, primarily concerning core aspects such as the application of law, the protection of parties, and inter-state judicial cooperation.

In terms of the application of law, two key mechanisms embody this principle. First is the doctrine of party autonomy allows parties to choose the governing law themselves. This respects their will, demonstrating equality, and helps them pursue their maximum commercial interests, achieving mutual benefit. Second is the doctrine of the closest connection avoids rigid rules and instead applies the law most closely connected to the case. This leads to fairer outcomes, reflecting substantive equality and mutual benefit.

Regarding the protection of parties, favoring the weaker party is crucial. In situations like consumer contracts and employment contracts, rules designed to “favor” the weaker party or mandatory provisions are used to offset the power imbalance between the strong and the weak. This moves beyond formal equality to ensure genuinely fair rights and interests, realizing mutual benefit.

At the level of judicial cooperation, this principle is also evident: The recognition and enforcement of foreign judgments directly secure the rights of the parties, laying the foundation for cooperation. And the principles of reciprocity and mutuality operate on the premise of mutual facilitation. If one party imposes improper restrictions, the other may take corresponding measures, thereby maintaining equal status and ensuring cooperative mutual benefit.

The relationship between the principle of equality and mutual benefit and the principle of sovereignty is constrained by the public policy reservation mechanism. Should the application of foreign law seriously undermine the fundamental interests of the forum state, its application may be excluded. This mechanism serves as a “safety valve” established by sovereignty for the operation of equality and mutual benefit. Conversely, the principle of equality

and mutual benefit aligns closely with the objective of protecting legitimate rights and interests. Safeguarding the legitimate rights and interests of parties, particularly vulnerable ones, constitutes a concrete pathway to realizing equality and mutual benefit.

It translates ethical demands of international intercourse into technical rules for legal selection, guiding the evolution of private international law from parochial territorialism to international coordination, from formal justice to substantive justice, and from rigid rules to flexible fairness. It not only signifies the advanced nature of modern private international law but, more fundamentally, serves as the bedrock for constructing a stable and predictable new order for international civil and commercial relations.

### **List of sources used**

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