Scientific Research Publishing

Beijing Law Review, 2023, 14, 1660-1672
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

"Contract" in Comparative Law

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How to cite this paper: Kei, C. K. (2023). "Contract" in Comparative Law. *Beijing Law Review, 14,* 1660-1672.
https://doi.org/10.4236/blr.2023.144091

Received: September 22, 2023
Accepted: October 30, 2023
Published: November 2, 2023

Abstract

This statement aims to provide a feature of contract in comparative law, specifically between the general contract law system in Macao SAR China, and England. Comparative law plays a crucial role in understanding and analyzing the similarities and differences between legal systems in different jurisdictions. By comparing the contract law systems of Macao SAR China and England, the comparative analysis will focus on key aspects such as the formation of contracts, the interpretation and enforcement of contractual terms, and the remedies available in case of breach of contract.

Keywords

Macro-Comparison, Micro-Comparison, Contractual Regime, Macao SAR and England, Civil Law (Família Jurídica Romano-Germânico), Common Law

1. Introduction

In order to conduct a micro-comparison between the Contract Law (contractual regimes) of Macao SAR and England, it is important to consider their respective legal system within the broader context of comparative law. While legal dogmatics provide a framework for comparing the macro aspects of the Civil Law (Família Jurídica Romano-Germânico) and the Common Law, and the micro-comparison will provide valuable insights into the similarities, differences, and potential areas of convergence or divergence between the contractual regimes of Macao SAR and England in the context of their respective legal system. This analysis should encompass not only the legal principles and regulations governing contracts in both jurisdictions, but also the historical, cultural, and socio-economic factors that may have influenced the development and application of these contractual regimes. Furthermore, it is important to consider the role of legal transplants and influences from other legal systems in shaping the contractual regimes of Macao SAR and England.

2. Comparison between the Civil Law[1] (Família Jurídica Romano-Germânico) and the Common Law

2.1. Macro-Comparison between Macao SAR and England

According to Prof. Paula Nunes Correia (Correia, 2012: p. 33)[2], the qualification of Macao's legal system as a member of the great Roman-Germanic or civil law family is therefore beyond doubt, and the aspects that essentially characterize it should remain unchanged for a period of fifty years, in accordance with the Macao SAR's Basic Law. The affirmation of the Territory's particular identity must also include the existence and preservation of its own legal system.

[3](Correia, 2012: p. 29) As Macao SAR lived under Portuguese administration for more than four centuries, sovereignty, although "divided" in Gonçalves Pereira's words, could not fail to be exercised through the legal system that officially governed the Territory until it was returned to the People's Republic of China (PRC).

In the last period of Portuguese sovereignty, the so-called "transition period", which ran from 1988—with the culmination of the signing and ratification, in 1987, of the Joint Declaration (JD) by the governments of the Portuguese Republic (PR) and the People's Republic of China (PRC) on the Question of Macao SAR, which marked the immediately preceding period—until 20 December 1999, This sovereignty was exercised "in order to ensure the success of the transition process", at which time "the political-legal instruments were drawn up", in particular the Basic Law[4] (LB) and the Macau Grand Codes, which are currently in force in the RAEM (Macao SAR) for fifty years, "in accordance with the principle of one country, two systems": During this period of time, the previously

[1]All is from the Portuguese version of the Macao SAR Law, so the English version is not binding.

[2]According to Prof. Paula Nunes Correia, this period was preceded, according to Boaventura S. Santos, by four others: one that first ran from the beginning of colonization until the middle of the 19th century; A second period lasted until 1949 and was marked by the assertion of Portuguese sovereignty; a third period, from 1949 to 1974, marked by the "conflictual division of sovereignty"; and, from 1974 to 1987, "a period of renegotiation of the division of sovereignty", which culminated in the signing of the Joint Declaration of the RP (República Portuguesa) and RPC (República Popular da China) Governments on the Question of Macau. Cfr. Repertório do Direito de Macau (2012), versão Portuguesa, 1ª. reimpressão, Faculdade de Direito da Universidade de Macau (pp. 33).

[3]Prof. Paula Nunes Correia, O SISTEMA JURÍDICO DE MACAU: UMA PERSPECTIVA DE DIREITO COMPARADO, Cfr. Repertório do Direito de Macau, versão Portuguesa (2012), 1ª. reimpressão, Faculdade de Direito da Universidade de Macau (pp. 29).

[4]The **Basic Law of the Macao Special Administrative Region** (MSAR) of the People's Republic of China (PRC) is a document with constitutional force in the internal legal order of the Macao SAR. The Basic Law defines the fundamental principles that the Macao SAR must follow and respect, as well as its status and its relationship with the Central Authorities of the PRC. All systems and policies applied in the Macao SAR, including social and economic systems, the system of guaranteeing the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, as well as the policies related to them, are based on the provisions of this document. In addition, no law, decree-law, administrative regulation or normative act of the Macao SAR may contravene this Basic Law. It entered into force on 20 December, 1999, when the PRC took over the exercise of sovereignty over Macao. This document was drafted in accordance with the Chinese policy of "one country, two systems", presented and defined by Deng Xiaoping. This political principle is legally represented by Article 31 of the Constitution of the People's Republic of China. In addition, Basic Law is also based on the Joint Chinese Portuguese Declaration (1987). It thus has a twofold legal basis (Article 31 and Joint Declaration). The Basic Law replaces the Macao Organic Statute, which entered into force in 1976. Cfr. https://pt.wikipedia.org/wiki/Lei_B%C3%A1sica_da_Regi%C3%A3o_Administrativa_Especial_de_Macau

existing capitalist system and way of life will remain unchanged, and the socialist system and policies will not be applied in the Macao SAR (art. 5[5] LB).

So, through Macao SAR's developed legal history, we can learn that it adopted ***the Civil Law* (*família jurídica Romano-Germânico*),** in which law plays a central role in the regulation of social life[6], and the Roman-Germanic legal family history, as Paulo Cardinal[7] taught in class, 「is influenced by Roman Law (it is o direito de solar), Direitos Povos Germânicos, Corpus iuris civilis, Codificações Gótica e alarico, a Revolução da Francesa, and the language is Latim and the Direito Canónico.

In other words, as Carlos Ferreira de Almeida e Jorge Morais Carvalho (de Almeida e Jorge Morais Carvalho, 2013: pp. 43-46)[8] point out about the History of Romano-Germanic, "during the Early Middle Ages, In the territory corresponding to the former Western Empire, several kingdoms of Germanic origin were formed. In the same area, populations that continued to be governed by Roman law coexisted with others (those of the invaders) who preferentially applied Germanic customs. Some of these customs were compiled in writing.

More important for the right position of the two words (Roman-Germanic) seems to be the intention to emphasize the structural similarity between the laws and culture of Roman-speaking countries and the laws and culture of German-speaking countries.

The reception of Roman law consisted of the study and application of Roman law as it appeared in the compilation drawn up on the initiative of Emperor Justinian (6th century AD), which later became known as the Corpus Juris Civilis. The set consisted of four parts—Digesto (or Pandectas), Institutas, Código and Novelas.

As much or more than the reception of Roman law, the French Revolution is a decisive historical event for the converging internal elements of the legal orders that form part of this legal system.

The structure and functioning of constitutional institutions were marked by the principle of the separation of powers, with a particular influence on competences relating to legislative production and the reluctance to recognize any normative efficacy of the judicial function.

The codification, with the meaning that has since been attributed to it in Roman-Germanic law (systematic, synthetic and scientific compilation of legal norms), was the formula found to ensure the concentration and dissemination of

[5]No art. 5.° da LB, Na região Administrativa Especial de Macau não se aplicam o sistema e as políticas socialistas, mantendo-se inalterados durante cinquenta anos o sistema capitalista e a maneira de viver anteriormente existentes. (In English version is: Article 5 of the Basic Law: "The socialist system and policies shall not be applied in the Macao Special Administrative Region, and the capitalist system and the way of life previously existing shall remain unchanged for fifty years.")

[6]Dário Moura Vicente (2018), Direito Comparado, volume I, 4ª Edição, revista e atualizada, Almedina, pp. 6

[7]Paulo Cardinal, Professor at the Faculty of Law at the University of Macau, taught a Comparative Law class, and the materials were not published.

[8]Carlos Ferreira de Almeida e Jorge Morais Carvalho (2013), Introdução ao Direito Comparado, 3ª Edição, Almedina, pp. 43-46.

the law and the preferred instrument for giving it primacy among the sources of law."

The sources of the formation of law are Law (written) (Lei na escrita) and Custom, and the modes of revelation or explanation of the law are jurisprudence and doctrine, also more sources are International Law (whether or not it needs a "dualist or monist" transformation; and Macao SAR is monist, which can directly apply treaties that do not violate the fundamental principles of the Basic Law of the Macau SAR.) and European Union law.

The discovery of Law or Method is Interpretation (in art. 8[9] of the CCiv Macau) and Integration (in art. 9[10] of the CCiv Macau) which the form of law normally in the Code (the general rule of legal order), and the methods are scientific, elaborate, advanced, general and abstract, namely, the essential characteristic that is rule for the case, which is contrary to the Common Law, the case for the rule.

The judicial organizations that divide the jurisdiction into common, administrative, constitutional, and demonstrate some characteristics of the Civil Law (família jurídica Romano-Germânico) on the 1) codification (it is the specific localization code for Macau), potentially through the codes to express the branches of law, namely, in Macau, there are five major codes: Civil, Commercial, Criminal, Civil Process, Criminal Process, plus the smaller codes: Administrative Procedure (procedimento), Administrative Process, Labour Procedure or Labour Process (in Macau there is no Labour Code, but we do have Labour law "Lei das relações de Trabalho – Lei n.˚ 7/2008"), Notary, Property Registry, Civil Registry, Commercial Registry, Land Law and Constitution etc. Regarding 2) The constitutional jurisdiction, in England they don't, but we have the constitution. 3) The principles of the separation of powers (check and balance): legisla-

[9]No art. 8.˚ do CCiv, (Interpretação da lei) 1) A interpretação não deve cingir-se à letra da lei, mas reconstituir a partir dos textos o pensamento legislativo, tendo sobretudo em conta a unidade do sistema jurídico, as circunstâncias em que a lei foi elaborada e as condições específicas do tempo em que é aplicada. 2) Não pode, porém, ser considerado pelo intérprete o pensamento legislativo que não tenha na letra da lei um mínimo de correspondência verbal, ainda que imperfeitamente expresso. 3) Na fixação do sentido e alcance da lei, o intérprete presumirá que o legislador consagrou as soluções mais acertadas e soube exprimir o seu pensamento em termos adequados. (In English version: (Interpretation of the law) 1) Interpretation must not be confined to the letter of the law, but must reconstitute the legislative thought from the texts, considering, above all, the unity of the legal system, the circumstances in which the law was drafted and the specific conditions of the time in which it is applied. 2) However, the interpreter may not consider legislative thought that does not have a minimum of verbal correspondence in the letter of the law, even if imperfectly expressed. 3) In establishing the meaning and scope of the law, the interpreter shall presume that the legislator has enshrined the most appropriate solutions and has been able to express his or her thoughts in appropriate terms.)

[10]No art. 9.˚ do CCiv, (Integração das lacunas da lei) 1) Os casos que a lei não preveja são regulados segundo a norma aplicável aos casos análogos. 2) Há analogia sempre que no caso omisso procedem as razões justificativas da regulamentação do caso previsto na lei. 3) Na falta de caso análogo, a situação é resolvida segundo a norma que o próprio intérprete criaria, se houvesse de legislar dentro do espírito do sistema. (In English version: (Integration of gaps in the law) 1) Cases which the law does not provide for shall be regulated according to the rule applicable to analogous cases. 2) There is analogy whenever the reasons justifying the regulation of the case provided for in the law arise in the omitted case. 3) In the absence of an analogous case, the situation is resolved according to the rule that the interpreter himself would create if he had to legislate in the spirit of the system.)

tive, administrative, judicial. And what's more, the legal professions have one or two lawyers. 」

And about ***the Common Law***, as Dário Moura Vicente (Vicente, 2018: pp. 70-71)[11] points out, "influenced by Roman Law, nevertheless, the principle of the 'rule of law' also plays a central role in legitimizing political power and constituted law—although the dominant understanding of this principle in these legal systems differs from that which prevailed in the Civil Law system (família jurídica Romano-Germânico).

As Albert Venn Dicey (1835-1922) put it in his classic work, the rule of law comprises three fundamental elements: 1) the state (government) is subordinate to the law and exercises its power over citizens exclusively through the law (primacy of law); 2) all citizens, including officials and administrative agents, are equally subject to the law and to the jurisdiction of the ordinary courts (equality before the law); and 3) the rules of the Constitution are not the source, but rather the consequence, of the decisions by which the courts define and give effect to individual rights.

In the light of the above, we can understand the prominent place given to jurisprudence in Common Law systems, where it is elevated, through the binding force recognised by judicial precedents, to the status of the primary source of law, since legal norms are exceptional in these systems; and when they do exist, they have a notoriously lower degree of abstraction than the legal norms of Civil Law systems (família jurídica Romano-Germânico).

In addition, priority is given to the formation of rules "da base para o topo" (from bottom to top) and not "do topo para a base" (from top to bottom). Self-regulation, or regulation by the parties themselves, therefore, enjoys special favour in Common Law systems.

In other words, Prof. Paulo Cardinal[12], Carlos Ferreira de Almeida e Jorge Morais Carvalho (de Almeida e Jorge Morais Carvalho, 2013: pp. 76-79)[13] state that, regarding the history of Common Law, "the origins of modern English law can be traced back to the Norman conquest following the Battle of Hastings (1066). Duke William of Normandy (King William I of England), who invoked succession rights to the throne, promised to respect the "Anglo-Saxon laws" ("*leis anglo-saxónicas*").

They were said to apply comune ley, an expression which, in French law, is the linguistic antecedent of the English expression common law, i.e., the "common law" of England.

In fact, as we have seen, there was previously no common law in England and this so-called common law had no uniform origin. In fact, the royal courts, by making use of the "common law", took advantage of some customary rules and others inspired by Roman and canon law. But they were mainly guided by crite-

[11]Dário Moura Vicente (2018), Direito Comparado, volume I, 4ª Edição, revista e atualizada, Almedina, (pp. 70-71).

[12]Prof. Paulo Cardinal taught comparative law at the law faculty of the University of Macau.

[13]Carlos Ferreira de Almeida e Jorge Morais Carvalho (2013), Introdução ao Direito Comparado, 3ª Edição, Almedina, (pp. 76-79).

ria of reasonableness and common sense.

The ***Precedent***, (rules of binding precedent), i.e., the tendency to decide a current dispute in the same way as a previous similar case, has stabilized and given coherence to the law applied. Common law is therefore, from the outset, jurisprudential law, and not customary law. (Therefore, as Prof. Paulo Cardinal said, common law is judicial law, which is the primary role, and equity is the secondary role. And because the ratio decidendi is a binding influence of the common law whose based on the elements of the judgement that are the proven facts, obiter dicta, ratio decidendi, decision, and as the character referred to that the case for rule.)

The English legal system thus became dualistic, with the coexistence of common law rules and Equity rules, generated and applied by different royal courts, with no defined means of compatibility. From then on, Equity was peacefully accepted as a complementary system to common law.

Therefore, as for its characteristics, its language is undoubtedly English, which, unlike Roman-Germanic, is multilingual. And the common law model is not very exportable, which is also different from Roman-Germanic (Romano-Germânica).

So, the legal professions have Barristers and solicitors."

2.2. Micro-Comparison of the Contractual Regime between Macao SAR and England

This text is only about the general micro-comparison contract between Macau and England.

In our Macao SAR Civil Code, in its general part (parte geral), in Title II on legal relations (relações jurídicas), which deals with persons, we distinguish between natural persons "pessoas singulars" (natural persons with complete capacity (18 years old) and incomplete capacity, i.e., incapacities (minors, interdictions and disabilities)), legal entity "pessoa colectiva" (associations, foundations and companies), and associations without legal personality and special committees.

In England, they distinguish between three types of people (General Principles of Law, Course No. 158: pp. 45-46)[14]: infants (minors up to 21 years old), married women and persons of unsound mind (interdictions). In other words, the word "person" is defined in the Interpretation Act 1978, Schedule 1 as including a body of persons, corporate or un-incorporate. In effect there are two types of persons: "legal persons" and "natural person". Legal persons are corporate bodies, corporate sole, Scottish partnerships, and European Economic Interest Groupings. And Natural persons are sole proprietors, partnerships, unincorporated associations[15].

The "***consensu***" becomes a contract between a proposal (offer) and an acceptance (acceptance), as a similarity between Macao SAR and England.

[14]General Principles of Law, Course No. 158, Correspondence College, London – E. 18, EST May's 1894, (pp. 15).

[15]Cfr. https://www.gov.uk/hmrc-internal-manuals/vat-registration-manual/vatreg02100.

And, the contract in Macao SAR or England, which depends on its object that does not violate the legal system of Macao SAR in art. 273[16] and 274[17] of the Macao SAR Civil Code (but for attention here, we have the elements of the legal relationship: subject, object, relevant fact and guarantee) and in England (General Principles of Law, Course No. 158: pp. 45-46)[18] that the contract depends on the intentions of both parties and the object cannot be illegal, the contract is an agreement that is bound by the law (will be enforced by the law).

Firstly, **the points between Macao SAR and England differs especially in the following hypothesis** (General Principles of Law, Course No. 158: p. 46)[19]. Like the public announcement. In England, the offeror (proponente) and the offeree (aceitante). An offeree cannot accept an offer until he knows of its existence. Thus, if A offers by advertisement a reward of £5 to anyone who returns his lost dog, and B finding the dog, brings it to A without having heard of the offer, B is not entitled to the reward of £5.

But in Macau, there is no such limit, which is a public announcement, the declaration can be made by means of an announcement published in one of the residence's newspapers of the declarant (declarante), when it is addressed to a person who is unknown, and therefore this publication, when it is made in Macao SAR, must be made in a newspaper published in the official language of the territory of Macao SAR; if the recipient (destinatário) is unknown, it must be made in two newspapers, one in each of the two official languages (Chinese and Portuguese version), in article 217[20] of the Macao SAR Civil Code. However, the

[16]No art. 273.˚ do CCiv, (Requisitos do objecto negocial) 1) É nulo o negócio jurídico cujo objecto seja física ou legalmente impossível, contrário à lei ou indeterminável. 2) É nulo o negócio contrário à ordem pública, ou ofensivo dos bons costumes. (In English version: (Requirements of the business object) 1) A legal transaction whose object is physically or legally impossible, contrary to the law or indeterminable is null. 2) A transaction contrary to public order or offensive to good customs is null.)

[17]No art. 274.˚ do CCiv, (Fim contrário à lei ou à ordem pública, ou ofensivo dos bons costumes) Se apenas o fim do negócio jurídico for contrário à lei ou à ordem pública, ou ofensivo dos bons costumes, o negócio só é nulo quando o fim for comum a ambas as partes.) (In English version: (the purpose contrary to law or public order, or offensive to good customs) If only the purpose of the legal transaction is contrary to law or public order, or offensive to good customs, the transaction is only void when the purpose is same to both parties).

[18]General Principles of Law, Course No. 158, Correspondence College, London – E. 18, EST May's 1894, (pp. 45-46).

[19]General Principles of Law, Course No. 158, Correspondence College, London – E. 18, EST May's 1894, (p. 46).

[20]No art. 217.˚ do CCiv (Anúncio público da declaração) 1) A declaração pode ser feita mediante anúncio publicado num dos jornais da residência do declarante, quando se dirija a pessoa desconhecida ou cujo paradeiro seja por aquele ignorado. 2) Para tanto, essa publicação, quando for realizada em Macau, deverá ser efectuada em jornal publicado na língua oficial do território de Macau mais utilizada pelo destinatário; sendo esta desconhecida, deverá ser feita em dois jornais, um em cada uma das duas línguas oficiais. 3) Se o destinatário não compreender qualquer destas línguas, e esse facto for do conhecimento do declarante, a declaração só poderá ser efectuada em jornal publicado em língua conhecida do declaratário. (In English version: (Public announcement of declaration) 1) The declaration may be made by means of a notice published in one of the newspapers of the declarant's residence, when it is addressed to an unknown person or a person whose whereabouts are unknown to the declarant. 2) To this end, if the declaration is made in Macao, it must be published in a newspaper in the official language of the territory of Macao most commonly used by the recipient; if the recipient is unknown, it must be published in two newspapers, one in each of the two official languages. 3) If the addressee does not understand either of these languages, and this fact is known to the declarant, the declaration may only be made in a newspaper published in a language known to the recipient.)

advert is not considered an offer, which depends on the recipient (destinatário)'s willingness to make an offer to the declarant. It means that the declarant has made an advert with a reward to look for the lost dog, if the recipient (destinatário) has looked for it, and then the recipient (destinatário) makes a new proposal to the declarant about the content of the advert, and it depends on whether the declarant accepts it or not.

Or rather, Mota Pinto says that when an offer is made to an undetermined person, in principle, there is only an invitation to contract (for example, if someone advertises in a newspaper that he sells certain goods for so much per kilogram or sends out price lists). There is still no offer to contract; the seller wants to reserve the final decision for himself.

But the public announcement is a unilateral legal conduct (negócio unilateral) (Prof. Paulo Cardinal), and what's more, I think that in the case of an undetermined person, it becomes a determined person to make an offer on the basis of the invitation, whether the other party (the person who made the invitation) accepts the offer or not, that there is a link with the nature of a contract, because my subject is the bilateral contract (negócio bilateral) "contract" (contrato).

Secondly, on the **validity of the contract** (validade do contrato). In England (General Principles of Law, Course No. 158: p. 45)[21], the terms called, in the enforceable contract the following elements must be present: 1) An offer by one party and an acceptance by another party, resulting in an agreement. 2) An intention that the agreement shall result in contractual relations. 3) Consideration (simple contract) or a writing under seal (specialty contract). 4) Capacity of the parties to contract. 5) Genuineness of consent. 6) The object of the contract must not be illegal.

If any one of these elements is not present the contract will be according to circumstances, **void, voidable or unenforceable.**

A **void** contract is destitute of all legal effect, and it confers no rights on either party. Examples: a contract by an infant to buy goods which are not necessaries, and a contract which is void under the Gaming Act, 1845.

A **voidable contract** is one which one of the parties can put an end to at his option. The contract is binding if the party elects to treat it as binding, or void if he elects so to treat it. Example: A by fraud induces B to make a contract with A. The contract is binding on A unless B chooses to set it aside. B can set aside the contract or not at his option, but A has no such option.

An **unenforceable contract** is a valid one which cannot be enforced by action owing to some technical defect, usually absence of a stamp, lapse of time, or want of written form. Example: an oral agreement for the sale of land. Such a contract may become enforceable in the future if the technical defect is cured.

[21]General Principles of Law, Course No. 158, Correspondence College, London – E. 18, EST May's 1894, (pp. 45).

In Macao SAR, if the contract entered by a minor (menor), which is **annulability (anulabilidade)** within 1 year and can be remedied by confirmation, in Articles 114[22], 280[23] and 281[24] of the Macao SAR Civil Code.

In our annulability (anulabilidade (Mota Pinto, 2012: pp. 620-621))[25] regime, the annullable negotiation is, in principle, treated as valid, despite the defect. If it is not annulled within the legal time limit and by the people with the right to do so, it becomes definitively valid, and the effects of the deal are retroactively destroyed. Annulability is based on infringements of requirements aimed at pro-

[22]No art. 114.˚ do CCiv, (Anulabilidade dos actos dos menores) 1) Sem prejuízo do disposto n.˚ 2 do art. 280.˚, os negócios jurídicos celebrados pelo menor podem ser anulados: a) A requerimento, conforme os casos, de quem exerça o poder paternal, do tutor ou do administrador de bens, desde que seja proposta no prazo de 1 ano a contar do conhecimento que o requerente haja tido do negócio impugnado, mas nunca depois de o menor atingir a maioridade ou ser emancipado, salvo o disposto no artigo 119.˚; b) A requerimento do próprio menor, no prazo de 1 ano a contar da sua maioridade ou emancipação; c) A requerimento de qualquer herdeiro do menor, no prazo de 1 ano a contar da morte deste, ocorrida antes de expirar o prazo referido na alínea anterior. 2) A anulabilidade é sanável mediante confirmação do menor depois de atingir a maioridade ou ser emancipado, ou por confirmação de quem exerça o poder paternal, tutor ou administrador de bens, tratando.se de acto que algum deles pudesse celebrar livremente como representante do menor; tratando-se de acto para o qual o representante legal necessitasse de autorização do tribunal, pode o mesmo solicitar ao tribunal a sua confirmação, que a dará ou não atendendo aos interesses do menor. (In English version: (Annulability of the acts of minors) 1) Without prejudice to the provisions of Article 280(2), legal transactions entered into by minors may be annulled: a) At the request, depending on the case, of the person exercising parental authority, the guardian or the property administrator, provided that the request is made within 1 year of the applicant's knowledge of the contested transaction, but in no case after the minor has reached the age of majority or has been emancipated, except for the provisions of Article 119; b) At the request of the minor himself/herself, within 1 year of his majority or emancipation; c) At the request of any heir of the minor, within 1 year of his death, which occurs before the expiry of the period referred to in the previous paragraph. 2) The annulment can be remedied by confirmation of the minor after reaching the age of majority or being emancipated, or by confirmation of the person exercising parental authority, guardian or property administrator, in the case of an act that one of them could freely conclude as the minor's representative; in the case of an act for which the legal representative needed authorization from the court, the legal representative can ask the court to confirm the act, which it may or may not do, taking into account the interests of the minor.)

[23]No art. 280.˚ do CCiv, (anulabilidade) 1) Só têm legitimidade para arguir a anulabilidade as pessoas em cujo interesse a lei a estabelece, e só dentro do ano seguinte à cessação do vício que lhe serve de fundamento. 2) Enquanto, porém, o negócio não estiver cumprido, pode a anulabilidade ser arguida, sem dependência de prazo, tanto por via de acção como por via de excepção. (In English version: (Annulment) 1) Only those persons in whose interest the law establishes annulment have standing to bring an action for annulment, and only within the year following the cessation of the defect on which it is based. 2) However, if the transaction has not been complied with, annulment may be brought, without any time limit, either by way of action or by way of exception.)

[24]No art. 281.˚ do CCiv, (Confirmação) 1) A anulabilidade é sanável mediante confirmação. 2) A confirmação compete à pessoa a quem pertencer o direito de anulação, e só é eficaz, quando for posterior à cessação do vício que serve de fundamento à anulabilidade e o seu autor tiver conhecimento do vício e do direito à anulação. 3) A confirmação pode ser expressa ou tácita e não depende de forma especial. 4) A confirmação tem eficácia retroactiva, mesmo em relação a terceiro. (In English version: (Confirmation) 1) Annulment can be remedied by confirmation. 2) Confirmation is the responsibility of the person to whom the right of annulment belongs and is only effective when it takes place after the defect on which the annulment is based has ceased to exist and the person making the confirmation is aware of the defect and the right to annulment. 3) Confirmation may be express or tacit and does not depend on a particular form. 4) Confirmation has retroactive effect, even in relation to third parties.)

[25]Carlos Alberto da Mota Pinto (2012), Teoria Geral do Direito Civil, 4ª Edição por: António Pinto Monteiro e Paulo Mota Pinto, 2ª reimpressão, Coimbra Editora, (pp. 620-621).

tecting predominantly private interests.

In our system (Macao SAR), if the form required by law is lacking, that is a **nullity (nulidade),** because the agreement that lacks the legally prescribed form is null (nulo), when there is no other sanction specifically provided by law, in article 212[26] of the Civil Code Macao SAR. For example, the purchase and sale contract of a property with a public deed in art. 866[27] of the Civil Code Macao SAR, but the parties conclude this contract with a private document or verbally, so this contract is null (nulo) due to non-compliance with the legal form. And in our nullity (nulidade) regime[28], the null (nulo) effect does not produce, from the beginning (ab inicio), by virtue of the lack or defect of an internal or formative element, the effects to which it tended. The regime and the more severe effects of nullity find their teleological foundation in reasons of predominant public interest. Nullity cannot be cancelled by confirmation and by the passage of time, they operate "ipse iure" or "ipsa vi legis", in art. 279[29] and 281.˚ of the Civil Code Macao SAR.

About our regime of invalidity (nullity and voidability), and we also have non-existence (Mota Pinto, 2012: pp. 617-619)[30]. Inexistence is an autonomous figure, with more serious consequences than nullity (nulidade) and annullability (anulabilidade).

Mota Pinto states that "with regard to **non-existence** (**inexistência**), it is said that we are dealing with this figure when the corpus of a certain legal act (negócio jurídico) (the materiality corresponding to the notion of such a act) does not even appear to exist, or, although this material appearance exists, the reality does not correspond to such a notion."

The hypotheses of legal non-existence of marriage are listed in Article 1501[31],

[26]No art. 212.˚ do CCiv, (Inobservância da forma legal), A declaração negocial que careça da forma legalmente prescrita é nula, quando outra não seja a sanção especialmente prevista na lei. (In English version: (Non-observance of the legal form), A business declaration that lacks the legally prescribed form is null, if there is no other sanction specifically provided for by law.)

[27]No art. 866.˚ do CCiv, (Forma) O contrato de compra e venda de bens imóveis só é válido se for celebrado pela forma prescrita na lei do notariado. (In English version: (Form) The contract for the purchase and sale of immovable property is only valid if it is concluded in the form prescribed by the Notaries Act.)

[28]Carlos Alberto da Mota Pinto (2012), Teoria Geral do Direito Civil, 4ª Edição por: António Pinto Monteiro e Paulo Mota Pinto, 2ª reimpressão, Coimbra Editora, (pp. 619-620).

[29]No art. 279.˚ do CCiv, (Nulidade) A nulidade é invocável a todo o tempo por qualquer interessado e pode ser declarada oficiosamente pelo tribunal. (In English version: (Nullity) Nullity can be invoked at any time by any interested party and can be declared by the court of its own motion.

[30]Carlos Alberto da Mota Pinto (2012), Teoria Geral do Direito Civil, 4ª Edição por: António Pinto Monteiro e Paulo Mota Pinto, 2ª reimpressão, Coimbra Editora, (pp. 617-619).

[31]No art. 1501.º do CCiv, (Casamento inexistente), É juridicamente inexistente: a) O casamento celebrado perante quem não tinha competência funcional para o acto, salvo tratando-se de casamento urgente; b) O casamento urgente que não tenha sido homologado; c) O casamento em cuja celebração tenha faltado a declaração de vontade de um ou ambos os nubentes, ou do procurador de um deles; d) O casamento contraído por intermédio de procurador quando celebrado depois de terem cessado os efeitos da procuração, ou quando esta não tenha sido outorgada por quem nela figura como constituinte, ou quando seja nula por falta de concessão de poderes especiais para o acto ou de designação expressa do outro contraente; e) O casamento contraído por duas pessoas do mesmo sexo.

and Article 1503[32] of the Civil Code Macao SAR states that non-existence can be invoked by any person at any time, regardless of a judicial declaration, and that a non-existent marriage has no legal effect and is not even considered to be a putative marriage. On the other hand, annulled marriages (casamento anulado) produce the effects of a putative marriage. Or in article 239[33] of the Civil Code Macao SAR, which states that the declaration of the declarant has no effect.

Thirdly, **on contract interpretation**, in England (General Principles of Law, Course No. 158: pp. 89-90)[34], If a contract is reduced by the parties into writing, the general rule is that it cannot be varied by parol evidence. Parol means anything done by word of mouth. But to this there are the following five main exceptions:

1) Parol evidence may be given to show that the written contract was made to a condition or stipulation.

2) If the whole contract was not intended to be put into writing, parol evidence can be given of the additional terms.

3) Parol evidence can be given to prove the rescission or complete extinction of a written contract:

4) Parol evidence can be given to explain a latent but not a patent ambiguity.

5) Parol evidence can be given to prove a trade usage or a local custom.

And in Macao SAR, Mota Pinto (Mota Pinto, 2012: pp. 441-454)[35] states that "interpretation in legal act (negócio jurídico) is the activity aimed at establishing the decisive meaning and the scope of the transaction, according to the respective integrating declarations. It is a matter of determining the content of declara-

[32]No art. 1503.˚ do CCiv, (Regime da inexistência) 1) O casamento juridicamente inexistente não produz qualquer efeito jurídico e nem sequer é havido como putativo. 2) A inexistência pode ser invocada por qualquer pessoa, a todo o tempo, independentemente de declaração judicial. (In English version: (Regime of non-existence) 1) A legally non-existent marriage has no legal effect and is not even considered to be putative. 2) Non-existence may be invoked by any person at any time, regardless of judicial declaration.)

[33]No art. 239.˚ do CCiv (Falta de vontade de acção, falta de consciência da declaração e coacção física) 1) A declaração não produz qualquer efeito, se o declarante: a) Não tiver qualquer vontade de acção; b) Agindo sem culpa, não tiver a consciência de fazer uma declaração negocial; ou c) For coagido por força física ou psíquica irresistível a emiti-la, de tal modo que à declaração não corresponda qualquer vontade. 2) Para efeitos da alínea b) do número anterior, considera-se que a falta de consciência da declaração foi devida a culpa do declarante, quando seja razoável supor que este, se tivesse usado da diligência exigível no comércio jurídico, se teria apercebido de estar a emitir uma declaração com valor negocial. 3) Se a falta de vontade de acção for devida a culpa do declarante, este fica obrigado a indemnizar o declaratário, nos termos do n.˚ 1 do artigo 219.˚ (In English version: (Lack of will to act, lack of awareness of the declaration and physical coercion) 1) The declaration shall have no effect if the declarant: a) has no will to act; b) acting without fault, has no awareness of making a business declaration; or c) is coerced by irresistible physical or psychological force to make the declaration, in such a way that the declaration does not correspond to any will. 2) For the purposes of point (b) of the previous paragraph, the declarant's lack of awareness of the declaration shall be deemed to be due to his fault when it is reasonable to assume that, if he had used the diligence required in legal transactions, he would have realised that he was making a declaration with a negotiable value. 3) If the declarant's unwillingness to act is due to his fault, he shall be obliged to compensate the recipient, in accordance with Article 219(1).)

[34]General Principles of Law, Course No. 158, Correspondence College, London – E. 18, EST May's 1894, (pp. 89-90).

[35]Carlos Alberto da Mota Pinto (2012), Teoria Geral do Direito Civil, 4ª Edição por: António Pinto Monteiro e Paulo Mota Pinto, 2ª reimpressão, Coimbra Editora, (pp. 441-454).

tions of will.

The preferable position in the law doctrine, de jure constituendo, for most transaction (negócio), is the *doctrine of the recipient's impression*, as it is largely more favourable to the ease, speed, and security of legal-negotiate life (vida jurídico-negocial).

According to the criterion proposed, regarding the problem of the type of negotiating meaning that is decisive for interpretation, here to we must operate with the hypothesis of a normal recipient: all the factors or elements that a reasonably well-instructed, diligent, and shrewd recipient (declaratário), in the position of the actual recipient's (declaratário), would have considered.

If, however, the doubt that is reached at the end of the interpretative work is insurmountable (insanável), it seems that the declaration is ineffective (ineficaz), at least by analogue application of Article 216.˚ n. (3)[36] of the Civil Code Macao SAR."

Therefore, the law in force determines that the negotiate declaration (declaração negocial) is valid with the meaning that a normal recipient (declaratário), placed in the position of the real recipient (declaratário), can deduct from the declarant's behaviour, unless the declarant cannot reasonably rely on it. And whenever the recipient knows the declarant's real will, it is in accordance with this will that the declaration issued is valid, in article 228[37] of the Civil Code Macao SAR.

And if there is any doubt about the meaning of the declaration, prefer in gratuitous transaction (negócio gratuito), the least burdensome for the disposer (disponente), in onerous transaction (negócio oneroso) this will lead to a better balance of performance, in art. 229[38] of the Civil Code Macao SAR.

And in England there is no system for integration the contract, but in Macau there is in Article 230[39] of the Civil Code Macao SAR, in the absence of a supplementary rule, and since the parties have not established the procedure for filling in the gaps in the negotiating declaration, it must be integrated in harmo-

[36]No art. 216.˚ n.˚ 3 do CCiv, A declaração recebida pelo destinatário em condições de, sem culpa sua, não poder ser conhecida é ineficaz. (In English version: A declaration received by the recipient in such a way that, through no fault of his/her own, it cannot be known is ineffective.)

[37]No art. 228.˚ do CCiv, 1) A declaração negocial vale com o sentido que um declaratário normal, colocado na posição do real declaratário, possa deduzir do comportamento do declarante, salvo se este não puder razoavelmente contar com ele. 2) Sempre que o declaratário conheça a vontade real do declarante, é de acordo com ela que vale a declaração emitida. (In English version: a) A business declaration is valid in the sense that a normal recipient, placed in the position of the real recipient, can deduct from the declarant's behaviour, unless the declarant cannot reasonably rely on it. b) Where the recipient knows the real will of the declarant, the declaration issued is valid in accordance with that will.)

[38]No art. 229.˚ do CCiv, (casos duvidosos) Em caso de dúvida sobre o sentido da declaração, prevalece, nos negócios gratuitos, o menos gravoso para o disponente e, nos onerosos, o que conduzir ao maior equilíbrio das prestações. (In English version: If there is any doubt about the meaning of the declaration, the one that is least burdensome for the contracting party prevails in gratuitous transactions, and the one that leads to the greatest balance of instalments prevails in onerous ones.)

[39]No art. 230.˚ do CCiv, 1) Nos negócios formais não pode a declaração valer com um sentido que não tenha um mínimo de correspondência no texto do respectivo documento, ainda que imperfeitamente expresso. 2) Esse sentido pode, todavia, valer se corresponder à vontade real das partes e as razões determinantes da forma do negócio se não opuserem a essa validade. (In English version: 1) In formal business transactions, a declaration cannot be valid if it does not have a minimum of correspondence in the text of the respective document, even if it is imperfectly expressed. 2) This meaning can, however, be valid if it corresponds to the real will of the parties and the reasons determining the form of the business do not oppose this validity.)

ny with the will that the parties would have had if they had provided for the omitted point, or in accordance with the dictates of good faith, when another solution is imposed by them. And in exceptional cases, the supplementary rule may give way to the will that the parties would have had if they had provided for the omitted point, when this is the solution imposed by the dictates of good faith.

3. Conclusion

Through the technique of comparison (macro- and micro-comparison) and legal dogmatics, we can know about the differences and similarities in the contract's validity, and contractual regime between Macao SAR (the Civil Law, família jurídica Romano-Germânico) and England (the Common Law). We can know about the consensual, the validity of the contract, the contract's interpretation, and the integration through this micro-comparison method, which aims to help someone have a good deal of business in these two places.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

Correia, P. N. (2012). *O Sistema jurídico de macau: Uma Perspectiva de Direito Comparado* (p. 29). Cfr. Repertório do Direito de Macau, versão Portuguesa, reimpressão, Faculdade de Direito da Universidade de Macau.

de Almeida e Jorge Morais Carvalho, C. F. (2013). *Introdução ao Direito Comparado* (3rd ed., pp. 43-46). Almedina.

General Principles of Law, Course No. 158, Correspondence College, London—E. 18, EST May's 1894, English Version.

HMRC Internal Manual VAT Registration. https://www.gov.uk/hmrc-internal-manuals/vat-registration-manual/vatreg02100

Lei Básica da Região Administrativa Especial de Macau. https://pt.wikipedia.org/wiki/Lei_B%C3%A1sica_da_Regi%C3%A3o_Administrativa_Especial_de_Macau

Mota Pinto, C. A. (2012). *Teoria Geral do Direito Civil* (4th ed.). António Pinto Monteiro e Paulo Mota Pinto, 2ª reimpressão, Coimbra Editora.

Repertório do Direito de Macau (2012). *Versão Portuguesa*. Reimpressão, Faculdade de Direito da Universidade de Macau.

Vicente, D. M. (2018). *Direito Comparado. Revista e Atualizada* (Volume I, 4th ed., p. 68). Almedina.