

12-1-1952

## Contracts – Date for Computing Exchange on Foreign Currency Contract

Follow this and additional works at: <https://repository.law.miami.edu/umlr>

---

### Recommended Citation

*Contracts – Date for Computing Exchange on Foreign Currency Contract*, 7 U. Miami L. Rev. 117 (1952)  
Available at: <https://repository.law.miami.edu/umlr/vol7/iss1/11>

This Case Noted is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

of a *particular* freedom of that Amendment, subject to the same constitutional requirements.

It is submitted, that the reference in the instant case to the direct regulation of those freedoms in the First Amendment should not be construed to deny the State the power to punish the wrongdoer by the most effective method available, subject specifically to the standards of the Eighth Amendment and the due process clause. The practical result that would follow such a holding would be to compel the Congress to deal with the lobbyist by increasing the term of imprisonment from one to four years; thus restricting the right of petition and the other freedoms of the First Amendment as well.

### CONTRACTS—DATE FOR COMPUTING EXCHANGE ON FOREIGN CURRENCY CONTRACT

The parties entered into a contract to be performed entirely in Mexico with payment in Mexican currency. Defendant breached the contract and plaintiff brought suit and recovered judgment in a United States District Court. The judgment awarded damages in the currency of the United States based upon the rate of exchange prevailing at the time of the breach. On appeal *held*, the rate of exchange to be used in computing the damages is that prevailing at the time of the judgment. *Paris v. Central Chiclera, S. De R.L.*, 193 F.2d 960 (5th Cir. 1952).

It is a well settled point of law that, in allowing recovery for the breach of a contract to pay foreign money, the judgment can only direct payment in the money of the forum.<sup>1</sup> The problem arises in the choice of a date from which to compute the rate of exchange. Shall it be the date of breach of the contract or the date of the judgment? This becomes an extremely important point when there has been an appreciable fluctuation in the rate of exchange between these dates. At first glance it appears that there is hopeless confusion among the cases. A closer examination demonstrates that this is not the case. There are two leading United States Supreme Court decisions on this question—the *Deutsche Bank* case<sup>2</sup> and the *Hicks* case<sup>3</sup>—and in both cases the opinion of the Court was written by Mr. Justice Holmes. The *Deutsche Bank* case holds the rate of exchange is to be computed as of the date of judgment while the *Hicks* case holds that it is the date of breach which should be used. An examination of the facts in the two cases shows us the reason for the apparent discrepancy between the two decisions and gives us a clear understanding of the law as it applies to these situations. In the *Deutsche Bank* case the action was for a debt in German marks which was *payable in Germany*. In the *Hicks* case, the debt was in

---

1. *Rives v. Dukes*, 105 U.S. 132 (1881); *Stewart v. Salamon*, 94 U.S. 434 (1877); *Liebeskind v. Mexican Light & Power Co.*, 116 F.2d 971 (2d Cir. 1941).

2. *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926).

3. *Hicks v. Guinness*, 269 U.S. 71 (1925).

German marks payable in this country. The overwhelming mass of decisions follows the rule, as set down in the above cases, that if the contract is payable in foreign currency and in a foreign country the rate of exchange shall be computed as of the date of judgment but, where the contract is payable in foreign money in this country, the exchange shall be figured as of the date of breach.<sup>4</sup>

Why should there be this distinction between the two types of cases? In the *Deutsche Bank* case, Mr. Justice Holmes points out, "An obligation in terms of the currency of a country takes the risk of currency fluctuations and whether creditor or debtor profits by the change the law takes no account of it. . . . Here we are lending our Courts to enforce an obligation . . . arising from German law alone and ought to enforce no greater obligation than exists by that law. . . ."<sup>5</sup> It is obvious that by converting the currency according to the rate of exchange existing at the time of the judgment the plaintiff gets that for which he bargained in the foreign currency. This justifies the holding in the *Deutsche Bank* case, but why is there a difference when the contract is performable or payable in this country? The Court points out in the *Hicks* case that when the contract is performable here the plaintiff has the option, upon the breach by the defendant, to demand damages in dollars and can no longer be compelled to accept foreign currency.<sup>6</sup> Thus the courts, by assuming the exercise of such option, conclude that the rate of exchange to be used in this type of case is that which prevailed at the time of the breach.

The results reached in these cases would appear to be most equitable. When the action arises wholly out of foreign law and our courts are lent merely for the enforcement thereof, the injured party gets exactly what he bargained for—or, to be more exact, its equivalent in American currency. On the other hand, when the plaintiff's cause of action arises here in the United States, he receives his damages as of the date of breach.

## CRIMINAL LAW — PROCEDURE — DISCOVERY — PRIVILEGE AGAINST DISCLOSURE OF IDENTITY

Defendants, charged with conspiracy to violate the Smith Act,<sup>1</sup> moved for issuance of a subpoena *duces tecum* directing the United States Attorney

4. *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926); *Hicks v. Guinness*, 269 U.S. 71 (1925); *Tillman v. Russo Asiatic Bank*, 51 F.2d 1023 (2d Cir. 1931); *Det Forenede Dampskibs Selskab v. Ins. Co. of North America*, 31 F.2d 658 (2d Cir. 1929); *The Integritas*, 3 F. Supp. 891 (D. Md. 1933); *Royal Ins. Co. v. Compania Trasatlantica Española*, 57 F.2d 288 (E.D. N.Y. 1932); *The Muskegon*, 10 F.2d 817 (S.D. N.Y. 1924). The English view holds that in all cases the rate of exchange is to be computed as of the date of breach, *Société des Hôtels v. Cummings*, [1921] 3 K.B. 459, *rev'd on other grounds*, [1922] 1 K.B. 451.

5. *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517, 519, 520 (1926).

6. *Hicks v. Guinness*, 269 U.S. 71, 80 (1925).

1. 62 STAT. 808 (1948), 18 U.S.C. § 2385 (Supp. 1951) (advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence).