

UNIVERSITY OF PÉCS



THESIS SUMMARY

**Comparative Legal and Economic Analysis of Franchising
Regarding European, Anglo-Saxon, and Mongolian Laws**

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Abstract

The origins of modern comparative law can be traced back to the civil law traditions of Europe in the late nineteenth and early twentieth centuries. The period was marked by significant legal reforms and a growing interest in comparing different legal systems to better understand their principles and applications. In this context, contract law emerged as a critical area of study. Consequently, commercial contracts, fundamental to the functioning of both domestic and international markets, were seen as the cornerstone of legal systems and have attracted considerable scholarly attention.

My research focuses on franchise contracts in comparative law, underscoring their pre-eminence and highlighting the necessity of understanding legal principles across different jurisdictions. It is aimed to suggest harmonizing and improving legal practices by drawing lessons from various traditions. Specifically, French and German law, as two primary representatives of the civil law pioneers, exhibit notable differences despite their shared roots. Furthermore, even within the common law tradition, there are meaningful variations between English and American law.¹

Under the influence of the industrial revolutions in the Western world, the textile, metallurgical, and engine industries developed, and urbanization, innovation, and franchise eras with business formats began.² As a result, countries and international organizations made efforts to put intellectual property into economic circulation and built up a consecutive legal framework. Since 1950, the franchise platform

has changed from a licensing system to a special type of agreement in contract law.

The former concept of franchising was often used to regulate competition and facilitate private investment through concession, however, as business landscapes changed gradually and globalization took hold, it became more contemporary. E.g., legal integration along with the expansion of commercial relations led to changes in the legal environment of transnational businesses such as franchises.

Nowadays, considering the characteristics of franchise businesses, there is a tendency to consider the regulatory environment as a topic of comparative commercial law. In particular, the combination of the law and economic analysis involves studying the franchise regulatory arrangements, and market contrast in different social systems and how they impact commerce and industries. Hence, the significance of my research covers comprehensive issues of franchise including historical and theoretical grounds and international and comparative studies.

Consequently, the construction of the thesis consists of 6 chapters. Chapter 1 provides a literature review, and introduction of the study, Chapter 2 examines the development history and legal and economic concepts of franchising, and Chapters 3 and 4 compare legal policy and dispute resolution practice of franchise-developed countries. Chapter 5 deals with franchise-associated regulatory matters in Mongolia and the final chapter summarizes the entire thesis work and answers solutions to research questions.

Keywords: *Franchise — Economic Analysis of Law — Comparative Law — Model Laws — Comparison of Anglo-Saxon and Continental Laws — Comparison of Asian (Mongolian) and EU and US Laws*

¹ E. Allan Farnsworth, Comparative contract law, *Oxford Handbooks Online*, 2012, 1-26 “See” in, https://edisciplinas.usp.br/plugin-file.php/5182946/mod_resource/content/1/COMPARADO%20-%20Farnsworth%20-%20Comparative_Contract_Law.pdf

² Nicholas F.R. Crafts, *The First Industrial Revolution: A Guided Tour for Growth Economists*, *The American Economic Review*, 1996, Volume 36, 197-201.

1. Literature Review

The literature review was conducted to obtain responses to the inquiries from academic sources and to address the research gap, I considered previous scientific texts, legislative enactments, case studies, and analytical reports mainly in the example of European and English laws. Scholarly documents and the writings cited in my research are classified as follows.

1.1. On Economic Study

Ronald Coase and Oliver Williamson's theories emphasized that franchisors would expand their brand with lower capital investment or operational costs and franchisees benefit from well-known brand recognition and business models. As supported by the Coase theorem (1960),³ the basic principle of the franchise is the inventing of intellectual assets representing it in the market. According to self-regulating economies, property rights create an efficient competition and the nature of it is the control over how the transferred ownership is used. The reason of that, the franchisor is not only the constituent of the intellectual property rights structure but also a player in the market.

The formulation of the above theorem, as the economic fundament of the franchise model, demonstrates that intangibles can be capitalized and profit comes from them despite vertical restraints or issues of competition imbalance. Consequently, the franchise agreement is about the legal transfer of property rights into the market, and a franchisee is a lessee of know-how and trademarks under a contractual obligation. Also, training and supply logistics provided by the franchisor, and profit planning, are all together elements of franchising by Demuynck's definition (2019).⁴

Whereas Nash equilibrium (1950)⁵ does prove the nature of the dominant strategy of franchising. The contract party's principle is to strictly adhere to the original format and standards from the moment the agreement is legally binding. In this way, both parties should win, and if there is a conflict, on the contrary, they will fail. Hence, franchise agreements contain mandatory provisions for the franchisor to assist in doing business during the contract period allocating the market properly, for calculating expected revenue and profit margin franchisees can have professional facilitation from the franchisor. The equilibrium provided an important focus for the study of compliance with the competition law, I quoted it for research while comparing commercial rules.

The agency theory of Ross (1973)⁶ explains the relationship between principals and agents. In the franchise market, the contract relationship is an institutional dynamic. The challenge is to align the interests of both parties and mitigate the agency problems

³ Ronald. H. Coase, *The Problem of Social Cost*, The Journal of Law and Economics, 1960, Volume 3, 1-44.

⁴ Thomas Demuynck & others, *Bertrand Competition with asymmetric costs: A solution in pure strategies*, Theory, and Decision, 2019, Volume 87, 147-154.

⁵ John. F. Nash, *Equilibrium points in-person games*, Proceedings of the National Academy of Science, 1950, Volume 36, 48-49.

⁶ Stephen Ross, *The economic theory of agency*, The American Economic Review, 1973, Volume 63, 134-139.

that may arise, such as the potential for shirking or moral hazard. Thus, theory examines how organizations conform to and are influenced by societal norms, rules, and values. Rubin (1978),⁷ The institutional structure of a franchise is discussed in the context of a contractual relationship between two legal entities. A franchise agreement is a binding contract between the franchisor, or parent company, and the franchisee, a firm established in a specific location to market the product or service offered by the parent company. The agreement outlines the terms and conditions under which the franchisee operates, including the use of trademarks, business processes, and support provided by the franchisor. Organizational factors such as legal environments, and cultural expectations can shape the behavior of franchisors and franchisees. Combined with this theory, compliance with Meyer and Rowan's (1970)⁸ institutional norms are essential for defining success in the franchise industry.

Williamson's (1981)⁹ transaction cost economics explores how firms make decisions about whether to produce goods or services internally or to transact in the market. In the context of franchising, it can explain why some businesses choose to franchise rather than maintain centralized ownership. Franchising can be seen as a way to reduce transaction costs related to monitoring and coordinating operations. Also, Baumol (1986)¹⁰ argues that understanding the costs associated with transactions such as information, and bargaining costs is key to understanding institutions. Transactions involving specific assets those that are tailored to particular exchanges are more likely to be managed within firms rather than through the market to diminish the risks of opportunism.

Brickley and Dark, (1987)¹¹ viewed when examining companies that both franchise some units and centrally operate others, several factors influence the decision to franchise or own a unit. The cost of monitoring store managers is particularly significant in this decision. High monitoring costs may lead companies to prefer franchising, as franchisees have a vested interest in the success of their units and therefore require less oversight compared to hired managers. The level of repeat business and the initial investment requirements per unit also play roles. Higher levels of repeat business may make franchising more attractive, as it ensures a steady income stream for franchisees. Conversely, units with high initial investment requirements might be more likely to be owned by the parent company to maintain control over significant capital expenditures.

Lafontaine (1992) Empirical research measures the performance of franchised versus company-owned units, typically finding that the franchised component performs better

⁷ Paul H Rubin, *The Theory of the Firm and the Structure of the Franchise Contract*, The Journal of Law and Economics, 1978, Volume 21, 223-233.

⁸ John Meyer and Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, American Journal of Sociology, 1977, Volume 83, 340-363.

⁹ Oliver E. Williamson, *The Economics of Organization: The Transaction Cost Approach*, American Journal of Sociology, 1981, Volume 87, 548-577.

¹⁰ William J. Baumol, *Williamson's The Economic Institutions of Capitalism*, The Rand Journal of Economics, 1986, Volume 17, 279-286.

¹¹ James A. Brickley, Frederick H. Dark, *The choice of organizational form the case of franchising*, Journal of Financial Economics, Volume 18, 1987, 401-420.

in terms of efficiency and profitability, due to the stronger incentives for franchisees to maximize their profits.¹² Franchisees are motivated to increase their profits because they have a direct financial stake in the success of their unit. The investment often leads to efforts in managing costs and improving service quality. While franchisees must fulfill the franchisor's guidelines and standards, they often have more autonomy in daily operations compared to managers of company-owned units.

According to Johanson and Vahlne (1977)¹³ market entry or expansion strategies, the Uppsala Model, and the Born Global Theory are applied to understand how franchises enter new markets. Franchisors often choose between different entry modes and expansion strategies based on factors like market availability, risk tolerance, and transnational jurisdictions. The Uppsala Model describes the process of internationalization as a gradual and incremental approach. It emphasizes learning and adaptation through increased commitment to foreign markets over time. Indeed, contracts must be versatile and robust to manage the complexities of operating in multiple jurisdictions simultaneously.

Wernerfelt's (1984)¹⁴ resource-based view suggests that a firm's competitive advantage is determined by its unique and valuable resources. Successful franchisors often possess intangible assets such as brand reputation, standardized business processes, and support systems. It helps to understand why certain franchises thrive based on the resources they bring to the table. Moreover, Johanson & Mattsson's (1988)¹⁵ network theory explores the relationships and interactions between entities within a network. Theory is applied to understand the connections between franchisors, franchisees, suppliers, and customers and views that network relationships impact the flow of information, resources, and support within the franchise system.

Along with the economic growth of the franchise, there are legal changes, which require prognoses and conclusions considering the interdependence of the relevant issues. For this reason, the data indicators of franchises and the factors affecting such business models were considered. Namely, Forester (1961)¹⁶ by explaining the reasons for the growth and decline of industry and population in large cities by publishing the book "Dynamics of Industry". After that Meadows (1972)¹⁷ defined the system dynamics model that simulates future predictions based on certain quantitative parameters revealing the correlation between the domestic and global growth of the franchise business, population,

¹² Francine Lafontaine, *Agency Theory and Franchising: Some Empirical Results*, The Rand Journal of Economics, 1992, Volume 23, 263-283.

¹³ Jan Johansen, Jahn Eric Vahlne, *The internationalization process of the firm: A model of knowledge development and increasing market commitments*, Journal of International Business Studies, 1977, Volume 8, 23-32.

¹⁴ Birger Wernerfelt, *A Resource-Based View of the Firm*, Strategic Management Journal, 1984, Volume 5, 171-180.

¹⁵ Jan Johanson and Lars-Gunnar Mattsson, *Internationalization in Industrial Systems*, Strategies in Global Competition. New York: Croom Helm, 1988, 303-321.

¹⁶ Jay Forester, *Industrial dynamics*, M.I.T Press, 1961, 18-64.

¹⁷ Donella Meadows & others, *The limits to growth*, Universe books, 1972, 17-45.

and geography. Also, Rosa and Maria (2009)¹⁸ highlighted to creation of a time series or differential “System of Equations” using statistical information, conducting experiments and simulations, and determining the future state of franchising models. Consequently, my thesis remarked several justifications have been provided to explain why businesses choose to expand through franchising.

1.2. On Comparative Legal Research

The thesis starts with examining past and present concepts and progressive stages of franchising including regulatory background. References related to the study of the legislative history of the franchise are viewed by the works of Gurnick (2021),¹⁹ Bosshardt, and Lopus (2013),²⁰ Mack (2015),²¹ Wahberg (1959),²² Malmendier (2009),²³ Mattiacci, and Guerriero (2015).²⁴ The comparative legal research accounts for a variety of academic papers in the field of private law branch concerning contract and commercial jurisprudence works of literature by Shelley and Morton (2000),²⁵ Terry and Huan (2013),²⁶ Adcock (2021),²⁷ and Sahan (2020).²⁸ Specifically, Florea and Galeş (2022),²⁹ Zeidman (1998),³⁰ Zimmermann and Whittaker (2000),³¹ Hartkamp and Hesselink

¹⁸ Rosa Mariz-Pérez, Teresa García-Alvarez, *A Systems Dynamics Model to Analyze the Influence of Financial Resources on The Percentage of Franchised Units*, International Business & Economics Research Journal, 2009, Volume 8, 53-60.

¹⁹ David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.

²⁰ William Bosshardt, and Jane Lopus, *Business in the Middle Ages*, Social Education, 2013, Volume 77, 64-67.

²¹ William Mack, *Proxeny and Polis: Institutional Networks in the Ancient Greek World*, Oxford, 2015, 22-89.

²² Hans Wehberg, *Pacta Sunt Servanda*, The American Journal of International Law, 1959, Volume 53, 775-786.

²³ Ulrike Malmendier, *Law and the finance at the origin*, Journal of Economic Literature, 2009, Volume 47, 1076-1108.

²⁴ Giuseppe Dari-Mattiacci and Carmine Guerriero, *Law and Culture: A Theory of Comparative Variation in Bona Fide Purchase Rules*, Oxford Journal of Legal Studies, 2015, Volume 35, 543-574.

²⁵ Kevin Shelley, Susan Morton, *Control in Franchising and the Common Law*, Franchise Law Journal, 2000, Volume 19, 119-127.

²⁶ Andrew Terry and Joseph Huan, *Franchisor liability for franchisee conduct*, Monash University Law Review, 2013, volume 39, 388-410.

²⁷ Alan Adcock, & others, *An Overview of Franchising Law in Southeast Asia*, Franchise Law Journal, 2021, Volume 41, 247-267.

²⁸ Guvercin Sahan, *ICC Model International Franchising Contract as a Source of Lex Mercatoria*, Public and Private International Law Bulletin, 2020, Volume 40, 1403-1432.

²⁹ Dumitrița Florea, Narcisa Galeş, *Franchise Contract in International Trade Law*, European Journal of Law and Public Administration, 2022, Volume 9, 12-22.

³⁰ Philip Zeidman, *The UNIDROIT Guide to International Master Franchise Arrangements: An Introduction and a Perspective*, 1998, 748-768.

³¹ Reinhard Zimmermann and Simon Whittaker, *Good Faith in European Contract Law*, eds Cambridge: Cambridge University Press, 2000, 7-26.

(2011),³² and Kerkovic (2010)³³ reviewed the comparison of franchise agreement requirements and regulations.

Anderman (2007)³⁴ examined that contract law is the root of franchise legally binding relationships and principles of civil law are considered the theoretical basis of contract law too. The difference between a franchise and other agreements is that the parties can enter into an asymmetric. In this regard, Tajti's (2015)³⁵ a definition that the franchisee exploits industrial or intellectual property rights relating to trademarks, utility models, copyrights, know-how, or patents with contract consideration of strict terms. Hence, due to the feature of the franchise agreement and the requirements for the parties, if one of the parties has an advantage, it should not be considered as unbalanced or unequal rights. The study shows how the franchisor's privilege arises as a lessor of intellectual property. Asserting that the franchisor has a right to control the franchisee is inevitable due to intellectual property domination.

Krystyna and Maryna (2019)³⁶ have recommended the principle of pre-contractual liability such as fake and unqualified franchisors, and patent infringements in US, German, and French contract law. Mark Abell, (2019)³⁷ has noted franchise system implication and disclosure in nations. In this regard, the study directed to defining liability against violations of pecuniary and non-pecuniary damages caused before the conclusion of the franchise agreement. Hence, the comparative study highlights the practice of liability for breach of franchise law, even if it is not negotiated by agreement.

Brekoulakis, Lew, and Mistelis (2016),³⁸ Rowley (2004)³⁹ and Pressman (2012)⁴⁰ addressed comparative studies of dispute resolution. They compared franchise quarrels linked to tribunal and court lawsuits. For instance, the inquisitorial form is dominated by a direct examination based on court proceedings, on the contrary, an accusatorial form has anti-suit policies for the parties' satisfaction as emphasized by Andrews (2013).⁴¹

Finally, the legal regulation of the franchise agreement is examined together with the background of the Civil Code in Mongolia, and the need for further improvement is

³² Arthur Hartkamp and Martijn Hesselink (eds), *Towards a European Civil Code*, Wolters Kluwer Law & Business, 2011, 110-125.

³³ Tamara Kerkovic, *The main Directions in Comparative Franchising regulations*, European Research Studies, 2010, Volume 13, 103-116.

³⁴ Steven Anderman, *The Interface Between Intellectual Property Rights and Competition Policy*, Cambridge: Cambridge University Press, 2007, 369-375.

³⁵ Tibor Tajti, *Franchise, and Contract Asymmetry: A Common Trans-Atlantic Agenda*. Loyola of Los Angeles International and Comparative Law Review, 2015, Volume 37, 245-273.

³⁶ Tsahik Kolinko, Krystyna Rezvorovych & Maryna Yunina, *Legal Characteristic of the Franchise Agreement in Germany*, Baltic Journal of Economic Studies, 2019, Volume 5, 96-100.

³⁷ Mark Abell, *The Regulation of Franchising Around the World*, The Law Reviews Press, 2019, 34-133.

³⁸ Stavros Brekoulakis, Julian Lew, & Loukas Mistelis, *The evolution and future of international arbitration*, Kluwer Law, 2016, 321-330.

³⁹ J William Rowley QC (eds), *Arbitration world. Jurisdictional comparison*, Reference Press, 2004, 119-124.

⁴⁰ Arthur Pressman, Justin Klein, *The strategy of Arbitration*, ABA, 2012, 14-32.

⁴¹ Andrews, N., *Arbitration & Mediation*, Intersentia, 2013, 89-94

determined previously by Gramckow and Allen (2010).⁴² Drawing inspiration from these studies, I examined comparative contract and franchise laws and other arrangements for recommending whether a separate franchise disclosure statute or updates to the Civil Code.

2. Research Gaps

Professional works of literature reviewed challenging issues integrated matters of franchising nevertheless there is still a need for comprehensive studies on the feasibility and impact of harmonizing franchise laws across different jurisdictions. Hence identifying research gaps in comparative franchise regulation involved the above literature and the existing legal frameworks and the following issues are unclear or require deep answers. It includes;

i. There is a lack of sources that systematically examine the historical progress of franchising, along with economic and legal arrangements, and the stages of original development in England, Europe, America, post-Socialist, and Asian perspectives. In the frame of the collected literature, a gap identified in the research, or an issue that should be further filtered, is to define the importance of the legal and economic theories for franchise grounds. For instance, antitrust laws are looked over for their impact on promoting competition and preventing monopolies and economic analysis of law examines how legal rules affect market transactions and failures. Efficient contract law reduces uncertainty and encourages trade by ensuring that parties adhere to their agreements. At the same time, the legal framework of franchising is heavily based on contract law, which governs the relationship between parties. Franchise agreements often include performance metrics and regular monitoring to align interests and reduce ethical risk and adverse selection. That is why the second chapter of the thesis focuses on researching franchise systems through certain theoretical grounds and tries to connect them to research questions.

ii. Current comparative studies referred to are usually in the form of an introduction list of the field laws in countries, and there is insufficient research on how franchise regulations are distinctive in different legal systems. For instance, the divergence between common law and German law regarding pre-contractual liability illustrates the broader differences in legal philosophies and approaches to contract formation. While common law prioritizes negotiation freedom and flexibility, German law seeks to balance this freedom with protections against negligent or harmful conduct during negotiations. This comparative insight is vital for franchise businesses operating in multiple jurisdictions, as it highlights the importance of understanding and navigating the nuanced obligations and liabilities that can arise during the pre-contractual phase. In my dissertation, sanctions against contract violations in countries are applied compared to Mongolian franchise regulation.

⁴² Heike Gramckow and Frances Allen, *Justice Sector Reform in Mongolia: Looking Back, Looking Forward*, Justice and Development working paper series, 2011, Volume 16, 3-16.

iii. Few specific monographs or academic articles related to the forum for resolving franchise disputes by court or arbitration have been published yet.⁴³ In other words, the paucity of comparative studies of franchise dispute resolution forums reflects the development of the procedural law field. Studying the characteristics of lawsuits resolved by courts and tribunals in the context of franchise disputes will contribute to future research in this field. Franchising dispute resolution is an area that has garnered attention, but several research gaps still exist. The inherent power imbalance between franchisors and franchisees often affects dispute resolution outcomes. There is a need for more studies on how these power dynamics impact the fairness and efficiency of dispute resolution processes. While franchising is global, the legal frameworks and dispute resolution mechanisms vary significantly across jurisdictions. Comparative studies could provide insights into the effectiveness of different approaches and identify best practices. Exploring these gaps could significantly contribute to improving the dispute resolution process in franchising, I conclude.

iv. Given the complexity and multifaceted nature of franchise agreements, studying them in depth involves a blend of contract law, intellectual property law, and commercial regulations. Until now, there are legal contents that consider the franchise agreement in the same sense as trade, distributor, patent, and license agreements, and therefore it is not only necessary to study the elements of the franchise agreement in depth but also the commercial law approach.

3. The Scope of Research

The original form of franchising with an apprenticeship and patronage system was established in ancient Rome and Greece, nevertheless, it has evolved during the past times into standardized business operations and brand consistency. The scope of my study starts with a historical background when the earlier development of franchising from England to Europe and America is a fascinating journey that spans several centuries. Since the First Industrial Revolution, an increase in scientific discoveries laid the foundation for the current formation of the franchise. Supposing that the economics maxim preaches about satisfying unlimited needs with limited resources, on the contrary after franchises arose it has turned an opportunity to balance supply and demand by introducing inexhaustible intangible assets such as trademarks, business reputation, and experience into the market.

The Old-Fashioned meaning of the franchise is derived from the French language “Chartes de franchise” refers to a special license or privilege granted by the government to enterprises to jointly conduct business activities in the form of a transfer of rights.⁴⁴ The concept of franchising has chronicle roots, namely the 17th-century Canadian fur

⁴³ David A. Beyer & Scott P. Weber, *Lawsuits to Get into the Franchise System*, Franchise Law Journal, 2003, Volume 23, 221-223.

⁴⁴ William Killion, *The history of franchising*, ABA, 1984, Chapter 1, 5-26.

retail Hudson's Bay Company, which was operating as a trading franchise. However, it was not until the 19th century that formal franchise systems emerged.

While the franchise concept has an ancient genesis, its modern form began to take shape in the United States in the 19th and 20th centuries. The historical development of franchising in America reflects its adaptability and evolution over time. From its humble beginnings in the 19th century to the present, franchising has become a major force in the England and American business landscape, contributing to economic growth and providing entrepreneurial opportunities for individuals.⁴⁵

As the first modern franchise, Isaac Singer and his partners developed a system to license individuals to sell and service their sewing machines. This marked an early example of granting particular rights in exchange for fees and royalties. After that, in the early 1960s, automobile manufacturers started using franchising to expand their distribution networks.⁴⁶ As a consequence, dealerships became a common form of franchising in the vehicle industry. Later, modern fast-food franchises were established.

The franchise model expanded beyond food and beverage to encompass a wide range of industries, including retail, services, education, and healthcare. After a while, technological advancements and globalization have influenced how franchises operate and enlarge. Regarding digital tools, e-commerce has been playing significant roles in marketing and communication within the franchise industry. Thereupon, modern franchises increasingly focus on sustainability, social responsibility, and meeting changing consumer preferences during the fourth industrial revolution.⁴⁷

Due to the influence of Western Society and economic headway, franchising began to be established in post-socialist countries which transitioned from centrally planned economies to market-oriented systems.⁴⁸ It means, that in the latter half of the 20th and into the 21st centuries, franchising became a global platform. Thus, it continues to evolve with innovations, changes in consumer behavior, and adaptations to market trends.

During this period, franchise organizations such as the International Franchise Association were established to provide support, advocacy, and networking opportunities for franchisors and franchisees. In response to some franchise failures, there was a push for regulation to protect franchisees. In 1979, the US Federal Trade Commission introduced the Franchise Rule and began to require franchisors to provide disclosure documents to potential franchisees.

Consequently, the franchise turned into a question of international law, while being a contemporary business structure rapidly expanding in interstate economic sectors. Hence compared to traditional contractual arrangements, nowadays franchises are sensitive to accepting a solo legal approach and the agreement players are mainly interested

⁴⁵ David Gurnick, *The First Franchise*, Franchise Law Journal, 2021, Volume 40, 631-646.

⁴⁶ The Federal Automobile Dealer Franchise Act. Public Law 1026, U.S.C.A

⁴⁷ Robert Emerson, and Michala Meiselles, *U.S. Franchise Regulation as a Paradigm for the European Union*, Washington University Global Studies Law Review, 2021, Volume 20, 743-801.

⁴⁸ Laurent Tournois, Damien Forterre, *The extremes of franchising in a post-communist country*, Journal of Business Strategy, 2020, Volume 41, 3-10.

in following private transnational rules and forum selection, rather than just a single country's regulations and jurisdiction.

For instance, the franchise boundaries changed from a licensing system to a special type of agreement in contract law and thus became an issue of commercial law. The former understanding of franchises was to regulate competition and support private investment by concluding concession agreements among the state and enterprises, however, over time, franchising contemporary models of Business-to-Business B2B and Business-to-Customer B2C concepts appeared. Therefore, the International Institute for the Unification of Private Law drafted the Model Franchise Disclosure Law in 2002, and after that over 20 countries, enacted disclosure statutes.

In particular, since economic integration throughout Europe and Asia,⁴⁹ narrow comprehension of franchising has changed gradually and is more focused on composite legal issues. That being so, Asian countries are intending to reform franchise regulations. Concerning, Mongolian private law legislation has a short history as in other post-socialist countries, and free market competition has developed rather late. Hence, I considered the past 100 years' private law background including the 1998 legal reform that established the conditions for diversifying private law legislation in my dissertation.⁵⁰

Furthermore, the main parts of the research scope cover the theoretical concept of franchising and a comparison of the USA, and EU member states' regulatory frameworks regarding model laws, treaties, and codifications. Also, the legal arrangement that can be introduced in the field of franchise and the experience of solving the problems that arise were reviewed, and jurisprudence and law precedent concerning franchise questions in contract law and examples of countries with different legal systems. Consequently, the thesis has been framed as "Comparative Legal and Economic Analysis of Franchising Regarding European, Anglo-Saxon, and Mongolian Laws".

4. Research Objective and Questions

The research is directed to contrast potential assumptions for balancing law issues specifically a regulatory advantage or barriers and recommending the best practices suitable for franchise-developing countries' soil. The study goal is, targeted at how the franchise law environment has changed adhering to the different manner of the social and economic systems and implemented successfully on the way to its progressive stage. Therefore, I suggested the following interrelated objectives, which are also related to the research area. It includes:

- Make the counter-hypothesis of the dissertation is intended to re-examine research gaps and summarize the findings.
- Investigating domestic and international rules and discovering franchise-friendly legal environments concerning contract and commercial law

⁴⁹ Nicola Casarini, The Future of the Belt and Road in Europe, *Istituto Affari Internazionali*, 2024, 1-22, "See", in <https://www.iai.it/sites/default/files/iaip2402.pdf>

⁵⁰ The Parliament Decree N.18, *Project for Legal Reform*, MGL, 1998.

perspectives.

- Due diligence on the constructive dispute resolution procedure for franchise lawsuits and compare distinguished franchise litigations in inquisitorial and adversarial systems.

While contemplating the above conceptual matter of the franchise regulatory framework has automatically brought my research questions, and are ranked as follows:

- How can systematize the historical development, legal, and economic theoretical foundations of the franchise?
- Does it need more precise coordination in the way franchises are regulated at the international level?
- What are the similarities and differences between the legal arrangements found in the comparative study?
- Why can nonjudicial forums be judged as better for resolving franchise disputes?
- What matters can be Mongolian legal and economic problems of franchising compared to some other franchise-developed countries and its solutions?

4.1. Research Design

Quantitative and qualitative methodologies of historical, comparative, case study, and data analysis were used in the research.⁵¹

- The evolution of franchise agreements has roots in Roman contract law, which laid the foundation for various contractual principles that have persisted and evolved. In Roman law, contracts like *societas* (partnerships) and *locatio conductio* (leases and services) provided early frameworks for agreements involving mutual obligations, which are essential in franchising. As these principles spread through Europe, they were adapted and expanded by different legal systems. In England, the development of intellectual property law, particularly the Statute of Monopolies (1624), began to formally recognize and protect exclusive rights, a concept crucial for modern franchising, where trademarks and business models are key assets. In the United States, the growth of franchising was further influenced by the development of competition law. The Sherman Antitrust Act of 1890 and later regulations sought to prevent monopolistic practices while allowing businesses to grow through franchising. This balance between promoting competition and protecting intellectual property has been a defining feature of American franchise law. Therefore, historical research on the origin of franchise research is summarized by synthesis

⁵¹ Craig Stephens, Alan Graham, & James Lyneis, System dynamics modeling in the legal arena: meeting the challenges of expert witness admissibility, System Dynamics Review, 2005, Volume 21, 95-122.

and critical thinking on the second source from the literature. The study highlights how the franchise agreement, which originated in Roman contract law, was expanded by legal regulations such as intellectual property statutes in England and competition rules in America.

- Across jurisdictions, the enforcement of franchise agreements typically relies on general principles of contract law, such as good faith, fair dealing, and the binding nature of agreements. Enforcement mechanisms and the degree of judicial intervention differ. The regulatory examination within this comparative framework would focus on identifying potential conflicts or collisions between these legal specifics. For instance, a franchisor operating in multiple jurisdictions might face challenges in complying with different disclosure requirements, which lead to inconsistencies or even legal disputes. Similarly, variations in contract enforcement affect the predictability of legal outcomes, complicating cross-border franchise relationships. Intellectual property protection is another area where differences in national laws could either enhance or undermine a franchisor's ability to safeguard its brand. Hence, I tried to compare parallel similarities and differences of objected studies. Particularly, the regulatory examination revealed whether the collision of law specifics on the franchising business model, including disclosure requirements, contract enforcement, and intellectual property.
- Using case analysis as a method to study judicial and arbitration experience in the context of franchise agreements is highly effective. The approach allowed me for a deep examination of how courts and arbitration panels have interpreted and enforced franchise agreements, providing insights into how legal principles are applied in practice. That is why, case analysis was indeed a valuable method for studying judicial and arbitration experience, particularly in the context of franchise agreements, and consequently, got back systematic and logical answers to the research questions.

5. SUMMARY

The legal framework of international franchises presumes a blend of branch laws, local legal requirements, and contractual obligations that are built on several components. Franchising internationally will usually require more strategy and a “think outside the box” approach than franchising domestically. While these advantages are large in scope, it’s imperative to discuss the challenges that could arise.⁵²

In chapter 2 of my thesis, I researched the historical background and concept of franchising to suggest harmonizing and improving legal practices by drawing lessons from various traditions. The study strongly focused on German and English law traditions regarding contract and comparative commercial legal studies. Combining law and economic analysis to study franchise regulatory arrangements and market contrasts across different social systems helped to reveal a comprehensive approach to understanding the broader impact of franchising on commerce and industries.⁵³

The influence of international legal regulations and the experiences of Europe, the United States, and England on the evaluation of franchise law is significant. These regions have played a major role in shaping the modern understanding and codification of franchise agreements, providing both achievements and shortcomings that inform current practices and future developments. For instance, England has developed a legal framework that is both business-friendly and protective of franchise relationships. Sometimes, the absence of heavy statutory regulation allows for flexibility in franchise agreements, which can be beneficial for both parties. English contract law, with its emphasis on freedom of contract, has influenced franchise practices worldwide. Whereas, European countries, particularly through the European Union, have made noteworthy strides in standardizing franchise laws across member states. The EU’s approach often emphasizes consumer protection and fair competition, which has led to a more balanced regulatory environment. While the U.S. has been a pioneer in franchise law, with the Federal Trade Commission Franchise Rule setting a standard for disclosure requirements that many other countries have adopted. The U.S. legal system has also developed a powerful body of case law that provides clarity on issues such as territorial rights, termination, and the enforceability of non-compete clauses.⁵⁴

The evolution of franchising has been significantly influenced by various international and regional legal frameworks, agreements, and guidelines, including those developed by the United Nations, the European Union, and other global entities. The UNCITRAL Model Law has furnished a framework for the arbitration of commercial disputes, including those arising from franchise agreements. Its adoption by many countries has facilitated the resolution of cross-border franchise disputes through arbitration, offering a neutral, predictable, and enforceable mechanism. The TRIPS Agreement,

⁵² Moritz, (2014) 235.

⁵³ Killion (1984) 5-26.

⁵⁴ Shelley, Morton, (2000) 119-127.

administered by the World Trade Organization, sets minimum standards for the protection and enforcement of intellectual property rights, including trademarks and trade secrets, which are connected to franchising.⁵⁵ The EU's Vertical Block Exemption Regulation allows certain vertical agreements, including franchise agreements, to be exempt from competition law prohibitions, provided they meet specific criteria. It also enables franchisors and franchisees within the EU to structure their agreements with greater flexibility, knowing that these agreements are generally exempt from antitrust scrutiny as long as they adhere to the rules.⁵⁶

A Master Franchise Agreement allows a franchisee to operate franchises in a specific territory and to sub-franchise to others. The model is commonly used for international expansion. The Master Franchise Agreement is critical in global franchising, as it enables rapid market penetration and local adaptation by delegating operational control to a master franchisee who understands the local market.⁵⁷ However, it also introduces complexities in contract enforcement and brand consistency, which need to be carefully managed. Also, Various national and international franchise associations, such as the International Franchise Association, have developed Codes of Ethics that set standards for fair and ethical conduct in franchising. Such codes often address issues like transparency, fairness, and dispute resolution. Adherence to these ethical codes helps maintain trust between franchisors and franchisees and promotes a positive public image of the franchising sector. Ethical guidelines ensure that franchising practices are conducted in a manner that respects the rights and interests of all parties involved, contributing to long-term success and stability.⁵⁸

The chapter identifies a clear evolution in the concept and practice of franchising, tracing its origins from a concession for performing public functions to its current status as a complex multinational commercial model and a distinct object of contract law. The concept of franchising originally emerged in the form of concessions granted by sovereigns or governments to individuals or entities to perform public functions. As economies progressed, the concept of franchising shifted from public functions to the commercial sector. The transition marked the beginning of franchising as an intellectual property lease, where franchisors granted franchisees the rights to use trademarks, business models, and proprietary processes. Franchising has now become a sophisticated object of contract law, encompassing a range of legal issues, including intellectual property rights, competition law, contract enforcement, and dispute resolution. Modern franchise agreements are comprehensive documents that carefully delineate the rights and obligations of franchisors and franchisees, reflecting the complexity of operating across different legal systems and markets.

The application of basic economic theories, such as game theory, system dynamics modeling, and contract asymmetry principles, has significantly influenced the

⁵⁵ Model Franchise Disclosure Law (2002)

⁵⁶ Mark Abell (2019) 34-133.

⁵⁷ Guide to International Master Franchise Arrangements (2007)

⁵⁸ The Code of Ethics for Franchising (2023)

development of modern franchise platforms. These theories help explain and predict the behavior of franchisors and franchisees, contributing to more balanced and effective franchise models.⁵⁹ Game theory, which studies strategic interactions between rational decision-makers, has been instrumental in understanding the dynamics between franchisors and franchisees. It gives insights into how both parties can optimize their strategies to achieve mutually beneficial outcomes. Economic analysis of contract asymmetry helps identify potential risks and imbalances that could lead to disputes or exploitation. For example, franchisors typically possess more information and control over the brand, which can create an asymmetrical relationship with franchisees.⁶⁰ By recognizing biases, franchisors can design contracts that are more transparent and equitable, promoting trust and reducing the potential for conflict.

Chapter 3 indicated the exploration of how common law and civil law jurisdictions approach franchising differently highlighting the distinct legal traditions and methodologies that influence the regulation and interpretation of franchise agreements. The regulatory landscape for franchising shows specific differences between Western and Eastern countries, reflecting the varying stages of market development and legal traditions in these regions. Western countries, particularly in North America and Europe, have well-established disclosure requirements designed to protect franchisees by ensuring they receive all necessary information before entering into a franchise agreement. Eastern countries are gradually adopting similar requirements, but the level of detail and enforcement can vary. For instance, China has established franchise regulations, including the Commercial Franchise Administration Regulation, which requires franchisors to meet specific criteria, such as having at least two company-owned outlets operating for more than one year before franchising. Whereas, the EU's influence on franchise regulation through competition law, unfair commercial practices, and consumer protection directives ensures a framework that enhances fairness, transparency, and competition in the franchise sector. Franchisors and franchisees operating in the EU must navigate the regulatory environment to ensure compliance and protect their interests, while also adapting to the specific requirements of different member states.⁶¹

Furthermore, as global concerns about sustainability and ethics continue to grow, franchising is likely to see a transfer towards integrating environmental standards, fair labor practices, and corporate social responsibility into its legal and operational frameworks. Such evolution reflects a broader trend towards holistic business practices that balance commercial interests with societal impacts, driving positive change across the franchise sector and beyond. legal frameworks may evolve to integrate standards related to sustainability, labor practices, and corporate social responsibility into franchise agreements and operational guidelines. Such a process could demand new regulations or amendments to existing laws to encompass these broader concerns.

⁵⁹ Dau-Schmidt and others, (1997) 613-630.

⁶⁰ Demuyne (2019) 147-154.

⁶¹ Tournois & Forterre (2020) 3-10.

Chapter 4 has examined franchise dispute resolution scenarios based on comparative research findings. Indeed, the inquisitorial and adversarial systems present distinct approaches to litigation, and understanding these can offer insight into how franchise disputes might be handled differently depending on the jurisdiction. The inquisitorial system is commonly found in civil law. In this system, the court plays an active role in investigating the case. Judges are involved in gathering evidence, questioning witnesses, and determining the facts of the case. The process is more focused on uncovering the truth and less on the parties' presentations.⁶² It could assume an in-depth examination of contract terms, compliance with franchise laws, and the conduct of both parties. The adversarial system is prevalent in common law countries. In this system, the parties to the dispute are responsible for presenting their cases, including evidence and arguments. Franchise disputes in such systems may connect rigorous legal arguments and strategic presentation of evidence by the parties. However, in recent times, some jurisdictions and international arbitration forums have used hybrid approaches, combining elements from both systems to suit the specific needs of the dispute. For instance, a tribunal might adopt inquisitorial methods in investigating facts while allowing parties to present their arguments and evidence.

Many countries are increasingly favoring alternative dispute resolution methods like mediation and arbitration for resolving franchise and commercial disputes. Such an approach is inspired by the desire to reduce court caseloads, expedite resolution processes, and offer more flexible and cost-effective solutions for the parties involved. For instance, in the United States, alternative dispute resolution is widely utilized, with many states having mandatory mediation or arbitration requirements before proceeding to trial in certain types of disputes. The Federal Arbitration Act supports the enforcement of arbitration agreements. The EU promotes arbitration through various directives, such as the Alternative Dispute Resolution Directive which aims to enhance access to justice and resolve disputes efficiently. Arbitration is gaining traction in countries like Singapore and Hong Kong, which have established themselves as major hubs for international arbitration. The above countries have strong legal frameworks supporting alternative dispute resolution and have seen a notable increase in its use.⁶³

Chapter 5 directly reviewed a short history of the codification of Mongolian private law, and current franchise legal arrangements such as intellectual property, and consumer protection. Evaluating Mongolian franchise laws in comparison to Western laws involved examining several key areas where these legal frameworks differ or align. The legal framework for franchising in Mongolia is relatively nascent compared to the USA and European countries. Key regulations include the Civil Code, Law on Competition, and other commercial regulations, which are not as detailed or comprehensive in addressing franchise-specific issues. Particularly, franchise disclosure requirements are less detailed.

⁶² Beyer & Weber, (2003) 221-223.

⁶³ Andrews (2013) 89-94.

According to the Civil Code, there are fewer mandated disclosures about the franchisor's financial status, business experience, and legal history compared to Western standards.⁶⁴ Improving Mongolian contract law related to franchising involves enhancing disclosure requirements, standardizing franchise agreements, strengthening franchisee protections, integrating effective dispute resolution mechanisms, and developing a dedicated regulatory framework. By addressing these areas, Mongolia can create a more favorable environment for franchising, support market growth, and protect the interests of both franchisors and franchisees. If Mongolia has a well-structured franchise law can encourage market growth and attract both domestic and international franchisors by providing a stable and predictable legal environment. For instance, implementing a separate, dedicated franchise law in Mongolia would address current gaps in franchise regulation, enhance protections for franchisees, standardize agreements, and establish effective dispute-resolution mechanisms.

Judging from the best practices discussed in the comparative study, it is recommended to create a franchise law that incorporates best practices from the EU while addressing Mongolia's unique requirements.⁶⁵ By intensifying regulatory oversight, implementing effective dispute resolution mechanisms, and promoting commercial-oriented franchises, the country can create a franchise law that supports a fair and dynamic market. Reshaping Mongolia's intellectual property and competition policies inspired by Western countries would require adopting comprehensive laws, improving enforcement mechanisms, and aligning competition policies with international best practices.

⁶⁴ Civil Code, MGL, 2002, Article 27, 335.

⁶⁵ Franchise Rule (2007) USA. 436 and 437.

THESIS RELATED PUBLICATIONS

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4. Namsrai Battulga: Mongolian laws regarding franchising questions: Critical thinking on domestic statutes, in: *Journal of Supreme Court Law Review*, Mongolia (2788-7960) 2023, Volume 104, Issue 2, 36-48.
5. Namsrai Battulga: Comparative Franchising Issues, in: *Journal of Education. Science. Scientific Personnel / Образование. Наука. Научные Кадры*, Russia (2073-3305), 2024, Volume 2, 96-105.
6. Namsrai Battulga: The hypothesis of balancing franchise dispute resolution: Court and arbitration matters, in: *Book of proceedings on the International doctoral and postdoctoral conference*, Croatia (3043-9906), 2024, 123-147.