

# REGULATION OF INTERNATIONAL BUSINESS

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Case studies on

## **The 1980 Rome Convention on the Law Applicable to Contractual Obligations**

### *Case 1<sup>1</sup>*

A Dutch producer of paper presses (the “Seller”) sells a paper press to a company in France (the “Buyer”).

After the delivery has taken place and part of the price has been paid, a dispute arises between the parties in respect of the payment of the balance of the price: the Seller claims payment of the balance, whereas the Buyer contests this claim on the basis of alleged faults of the paper press.

The negotiations of the sale agreement, as well as the negotiations connected with the claim for payment of balance, have been and are carried out through an agent of the Seller, based in France. Consequently, all negotiations and documentation (including also the contract) are in the French language. According to the terms and conditions of the contract, the paper press was to be (and actually was) delivered and installed, by the Seller, at the Buyer’s premises in France.

The sale contract does not contain a choice-of-law clause. What law governs the sale contract and has to be applied to solve the dispute that arose out of it?

### *Case 2<sup>2</sup>*

A German constructor (the “Constructor”) enters into an agreement for the construction of certain industrial facilities in Germany. In the frame of the implementation of this agreement, the Constructor enters into a sub-contract with a Danish company (the “Sub-contractor”), for the construction by the Sub-contractor of a certain part of the facilities.

The agreement between the Constructor and the Sub-contractor is negotiated and signed in Denmark and it is written in the Danish language. The contractual price is stipulated in Danish currency and is payable to the bank account of the Sub-contractor, in a Danish bank.

During the performance of the Sub-contract differences arise between the parties as to the specifications and certain terms of the Sub-contract.

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<sup>1</sup> *Société Nouvelle des Papeteries de L’Aa Sa v. BV Machinefabriek BOA*, *IPRax* 1994, 243. The Dutch Court operated an anticipatory application of the Rome convention, which had not yet come into force. See, for extensive comments and further references, LENNEP, W.H. van, ”Anticipatory application of a multilateral treaty with uniform conflict rules”, *Netherlands International Law Review*, XLII, 1995, 259-269.

The Sub-contract does not contain a choice-of-law clause. What law governs the Sub-contract and has to be applied to solve the dispute that arose out of it?

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<sup>2</sup>UfR 1996, 937; for more extensive comments see LOOKOFSKY, J., *International privatrett på formuerettens område*, Jurist- og Økonomforbundets Forlag, Copenhagen 1997, 74; NIELSEN, P.A., *International privat- og procesret*, cit., 506, 513; PHILIP, A., "First Danish Decisions on the Rome Convention", *IPRax* 1994, 150-151.