



UiO • **Faculty of Law**
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Case study

Choice of law



Case 1¹

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?

¹ *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.

Case 2¹

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.

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?

¹ 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.

Case 3¹

An Italian seller has contracted with a Russian buyer for delivery of machines for glass production. The parties disagreed on the quality of the delivered equipment. As per the Contract, the buyer was obliged to pay the purchase price within two weeks after signing the “*Protocol of final tests and start-up of the equipment.*” The buyer refused to sign the start-up protocol and to pay for the delivered equipment.

The contract contained, *inter alia*, the following provisions: “*If Protocol is not signed within three months from the delivery date [...] , the Protocol is considered as signed and the purchase price must be paid to the Seller anyway.*” The choice of law provision was drafted as follows: “*the present contract should be in compliance with UN`s conditions for international “sell-buy” agreements*”

What would be the applicable law?

¹ SCH-5253 (2013) reported as Case C52 in Selected Arbitral Awards, Vol.1 (2015), Case/Annotation, 341-344.

Case 4

A syndicated loan agreement was signed between a Netherlands company as a borrower, and a number of financial institutions, including a UK bank, the London branch of a German bank, an Austrian bank and its Russian daughter enterprise, as lenders. The Austrian bank acted as Agent for the financial institutions. The place of the conclusion of the syndicated loan agreement is Vienna, Austria.

The “Governing Law” clause of the agreement reads: *“This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law”*.

A series of collateral agreements were concluded in connection with the syndicated loan agreement, including:

- mortgage over immovable property of the borrower's subsidiaries located in Ukraine;
- pledge of movable property of the borrower's subsidiaries located in Ukraine;
- pledge of vehicles of the borrower's subsidiaries located in Ukraine;
- pledge of shares of the borrower's subsidiary located in the Russian Federation;
- pledge of money in the borrower's account with the Austrian bank which is the Agent under the loan agreement;
- deed of guarantee issued by the borrower's subsidiary located in the Russian Federation;
- deeds of suretyship issued by the borrower's subsidiaries located in Ukraine;
- deed of guarantee issued by the borrower's subsidiary in Cyprus.

What is the scope of applicable governing law? What would be the applicable law for the collateral agreements in case they do not contain a choice-of-law provision?

Case 5

A Netherlands company is selling its Russian subsidiary, a joint stock company, to a Cyprus legal entity. The transaction involves at least the following elements:

- the conclusion of a Share Purchase Agreement (the “SPA”);
- obtaining approval from a Russian antimonopoly authority and EU authorities;
- release of shares of the subsidiary which were subject to a pledge under English law;
- obtaining corporate approvals for the transaction from the seller and the buyer;
- transfer of shares of the JSC incorporated in Russia.

What would be the applicable law for the SPA? In case the chosen law for SPA is UK law (*“The governing law of this agreement, and of any claim, dispute or issue arising out of or in connection with this agreement or its subject matter (including non-contractual claims), shall be that of England and Wales”*) whether the law of other countries may be applicable at each stage of the transaction described?

Case 6

A contract for the sale of yellow maize is concluded between a Dutch company as the seller and a Belgian company as the buyer. The subject matter of the contract is maize of Ukrainian origin. The maize is to be delivered from Ukraine to port Mersin, Turkey; payment for the goods is to be made by letter of credit, the letter of credit to be issued to the seller's Swiss bank. The contract contains penalty clause for the late delivery.

What would be the applicable law? What would be effect for penalty clause if the contract is subjected to UK law, traditionally used for the sale of soft commodities?