SURVEY OF PRIVATE INTERNATIONAL LAW APPLIED TO BUSINESS

1 CONFLICTS OF LAWS

1. In the Netherlands a draft legislation (Kamerstukken II 1998/99, proposal n. 26-608, see the commentary of J.A. Pontier, Het wetsvoorstel Wet conflictenrecht onrechtmatige daad, in NiPR (Nederlands Internationaal Privaatrecht) 2000 Afl. 4, p. 136) on the conflict rules on tort liability provides as follows: the principle would remain that the applicable law would be the lex loci delicti. Such notion would be construed as the law of the place where the damage occurs. Yet, for unpredictable damages, it would be the law of the place where the event giving rise to tort liability occurred.

The principle of application of lex loci delicti would nevertheless be disregarded in favour of the law of the place of residence of the parties, when they reside in the same State, and in favour of the law governing the contract when the event giving rise to tort liability is closely connected to prior contractual obligations between the parties.

This draft legislation specifically excludes from its scope the product safety liability while there would be a specific regime concerning unfair competition.

1.1 Connecting factors

1.1.1 Contracts

2. Concerning the law governing the breach of an employment contract, the Social

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section of the Cour de Cassation upheld the decision of an appellate court judging that, in the absence of a choice of law by the parties, the contract signed for an unlimited period of time between a French bank and a Dutch citizen to be performed in a branch of this bank located in the State of New York should be governed by the laws of this state, as the place of performance of the contract (Cass. Social Section, May 18, 1999, Ferwerda v. BNP, in Gaz. Pal. (Gazette du Palais) 31.10/04.11.1999, p. 246).

3. A decision handed down in relation to a contract for the transfer of a soccer player made an interesting application of article 4 of the Rome Convention of 19 June, 1980 to the contracts of representation and intermediaries others than commercial agency contracts (Cass. First Civil Section, July 18, 2000, Bismuth v. l'Avenir Sportif, in J.C.P. (Juris-Classeur Périodique) 2000.IV.2580). The issue was to determine the law that governed an intermediary contract passed between a foreign club and a go-between domiciled in France.

Article 4 of the Rome Convention points to, in the absence of a choice, the law of the State to which the contract is most closely connected. Paragraph 2 of this article assumes that this is the State of habitual residence of the party owing the contract’s characteristic performance. The go-between performing his activities in France, this provision necessarily led to point to French law, which prohibited in that instance the payment of a commission.

4. In a decision of April 27, 1999, the Court of appeal of Arnhem applied Dutch law to determine whether the general sales terms issued by a Dutch company applied to contracts concluded with a buyer established in Germany, who was also a professional. For the sales made between 1991 and 1993, the Court considered that since the existence of the terms was merely mentioned on the documents issued by the seller and written in Dutch, the buyer was not bound to inquire about it. On the contrary, concerning the sales concluded from 1993 onwards, when the terms were printed on the back of the documents issued by the seller, these terms could be opposed to the professional buyer even though they were still written in Dutch. The court considered that the professional party established in Germany should have suspected that these were contractual terms and could have requested for their translation or questioned their application.

1.1.2 Goods

5. In a matter where a Dutch leasing company, who had financed the purchase of a car vehicle which had been stolen and then sold to a third party, claimed ownership of this car, the Supreme Court of the Netherlands applied the law of the place where the good in question was located on the day of the conclusion of the contract by the defendant in the proceedings of ownership claim (Hoge Raad, September 24, 1999, Van der Boon v. RG Lease).

6. The Dutch appellate court of Den Bosch has had to determine which law