

Lecture 4

**COMMERCIAL EFFICACY AND THE ROME CONVENTION**

*Themes:*

The rules of the 1980 Rome contracts convention; whether the convention serves commercial efficacy; the uncertainty of the convention's provisions

*Reference:*

Giuliano and Lagarde, *Report on the Convention*, OJ 1980 C-282/1; Dicey and Morris, ch. 32; Cheshire and North, ch. 18; Jaffey, ch. 5

**a. Identifying the applicable law: implied choice, and objective connection**

*Further reading:*

Struycken [1997] LMCLQ 18; Morse [1994] LMCLQ 560

1980 Rome Convention on the Law Applicable to Contractual Obligations, arts. 3,4

♦ *Bank of Baroda v. Vysya Bank Ltd.* [1994] 2 Lloyd's Rep. 87

*Egon Oldendorf v. Libera Corp. (No 2)* [1996] 1 Lloyd's Rep. 380

*Soc. Nouvelle des Papeteries de l'Aa v. Machinefabriek BOA*, Hoge Raad, 25 September 1992, NJ No. 750 (described by Struycken, op.cit.)

**b. The risk of displacement: mandatory rules and public policy**

*Further reading:*

Mann (1972-1973) BYIL 117; Hartley, *Recueil des cours*, vol. 266 (1997), 440

Rome Convention, arts. 3(3), 7, 16; Unfair Contract Terms Act 1977, s.27

♦ *Case C-381/98, Ingmar GB Ltd. v. Eaton Leonard Technologies Inc.*, The Times, 16.11.00 (ECJ)

[*Regazzoni v. Sethia Ltd.* [1958] AC 301 (HL)]

[*Ralli Bros. v. Cia. Naviera Sota y Aznar* [1920] 2 KB 287 (CA)]

**c. The assignment of debts: universal title v. party autonomy**

*Further reading:*

Struycken [1998] LMCLQ 345

Rome Convention, art. 12

♦ *Brandsma q.q. v. Hansa Chemie AG*, Hoge Raad, 16 May 1997, *Rechtspraak van de Week* 126 (described by Struycken, op.cit.)

[*Kelly v. Selwyn* [1905] 2 Ch. 117]

*Case study 4a:*

Sellerco, a Belgian company, sold goods to Buyerco, an English company. The contract, which is in a standard form invariably used by Sellerco for international sales, and which is in English, was concluded in London by Tony, an English resident and Sellerco's agent. The goods were delivered, and payment was to have been made, in London. Buyerco has refused to pay for the goods, and Sellerco has commenced proceedings in England against Buyerco for the price.

Which law governs Buyerco's liability under the contract?

*Case study 4b:*

Debtaco, a Ruritanian national with a flat in London, borrowed substantial sums from Lendaco, a wealthy national of Narnia. Under Ruritanian law it is illegal for Ruritanians to borrow from foreign nationals. In an attempt to avoid this rule, the parties expressly agreed that the loan agreement was to be governed by the law of Arcadia, which imposes no such restriction. The loan was to be repaid at Lendaco's office in Narnia on 1 May 2000.

On 1 April 2000 the repayment of such loans became illegal under Narnian law. Such loans are permitted under the law of Arcadia, under which the contract remains valid and enforceable. Debtaco has refused to repay Lendaco.

Advise Lendaco, which has brought proceedings in the English courts.

How, if at all, would your advice be different if the contract made no provision for the applicable law, but contained a clause submitting any disputes to the jurisdiction of the English courts?

*Case study 4c:*

Alpha, a company incorporated in Utopia, sold goods to Beta, a company incorporated in Dystopia, subject to a reservation of title pending full payment. The contract required Beta to assign to Alpha its rights against any sub-purchasers of the goods, and was subject to the law of Utopia. Upon its insolvency, Beta's liquidator contested the validity of several such assignments to Alpha, and claimed to be entitled to such proceeds of any sub-sales as had been credited to Beta's bank account. Under Utopian law the assignment of future debts are valid, but under the law of Dystopia they are not.

Which law governs the validity of the contested assignments?