

## RECHTSPRECHUNG / JURISPRUDENCE

### **Applicable Law to the Instant Acquisition of an Imported Stolen Car Judgment of the Supreme Court, 29 October 2002**

*Hiroshi Oda*

This case involves a claim for recovery by a German insurance company *vis à vis* a person who is in possession of a car (Mercedes 500SL, hereinafter, ‘the Car’) which had been registered in the then Federal Republic of Germany, but was stolen in Italy, and subsequently imported into Japan *via* UAE. The German insurance company X obtained the title to the Car from the original owner after paying him the insurance money.

The Car was imported into Japan by a Japanese company on July 23, 1991 from a second hand car dealer located in Dubai. The Car changed hands several times in Japan between car dealers, before an individual A purchased it from a car dealer and then registered the Car under the Road Transportation Vehicles Law, for the first time in Japan. The Car then changed hands again and ended up in the possession of the defendant Y.

The plaintiff, the German insurer X, claimed that the Car belonged to the company, while Y argued that he had acquired the title by virtue of Art. 192 of the Civil Code (*Minpô*) (instant acquisition).

Art. 192 of the Civil Code provides as follows:

If those who have commenced possession of a movable peacefully and openly were in good faith and without negligence at that time, this person shall acquire the rights over the movable instantly.

This provision originates from French Law. The German BGB has a similar provision (§ 935). The difference is that while in Germany, stolen goods are not covered by this provision, under Japanese law, they are covered.

The first instance court dismissed the claim of the plaintiff. However, the second instance court ruled that the applicable law in this case was German law. Art. 10 para. 2 of the Law on the Application of Laws (*Hôrei*) provides that the acquisition and loss of real rights regarding movables and immovables are subject to the law of the place where the facts which serve as the cause of the acquisition or loss were completed. The court found that the law of a fixed central place where the car was originally expected to be primarily used, *i.e.* the law of the place where it is to return, was the location of the object in this context. In the present case, according to the court, the place to which the

car should be returned was still Germany, despite the fact that it was physically in Japan, and the applicable law for the transfer of real rights should be German law. In conclusion, the court denied instant acquisition.

On appeal, the Supreme Court quashed the part of the judgment of the second instance court in which the plaintiff had lost. On the problem of the applicable law, the Supreme Court ruled that the law of the location as provided by Art. 10 of the above Law should be construed as the law of the physical existence of the object, except in cases where there are problems in allowing the place of its physical presence to be a nexus for the choice of law. Then, the court divided cars into two categories; cars which are placed in use, and cars which are not in such a state. The latter basically means unregistered or deregistered cars. The applicable law to the acquisition of title to a car is the law of the place of its primary use in cases where the car is in a state ready for use, and in cases where it is *not* ready for use, unless there are special circumstances such as where it is in the process of transportation to another country, the law of the place where it physically exists is applicable.

According to the court, regarding cars which are traded in a state not ready to be placed in use, there is no place of primary use, and the acquisition or loss of the rights has a close connection with the law of the country of location. Furthermore, there are cars which are traded as unregistered cars with the assumption that they will be newly registered and placed in use in the importing country, but which in fact, had been registered in another country such as the Car in the present case. If laws other than the law of its physical existence such as the law of the country of registration, are made the applicable law, it would not be easy for those who participate in the transaction to understand which law is the applicable law at the time of the transaction. Such a situation is against the requirement that those who are involved in international trade should be allowed to clearly predict the choice of the applicable law which may affect his transaction and his ability to take measures in advance. It will significantly harm the stability of trade from the viewpoint of international private law. Therefore, the court concluded that the law of the place of its physical presence, *i.e.* Japanese law, should be the applicable law, unless the car is being transported to the consignee country and there is a problem in making the law of its physical presence the applicable law. This is in contrast to the judgment of the second instance court which reached a totally different conclusion, referring to the 'need to prevent car laundering'.

Once Japanese law was found to be applicable, the problem was whether the defendant or someone in the chain of transactions from the time of the importation through to the defendant has acquired title by instant acquisition. The second instance court, in an *obiter dictum*, ruled that even if Japanese law were applicable, since the purchaser of the car was under an obligation to verify the certificates issued by the foreign manufacturer or a genuine titleholder which prove ownership in the country of the previous registration, but has failed to do so, the purchaser was negligent and therefore, instant acquisition was not applicable. However, the Supreme Court found that there was no

proof that in the imported car trade, the handing over or verification of such documents always takes place in practice. In the present case, A, who is an individual, purchased the Car from a dealer without any record suggesting that it is was a dealer which handled stolen goods. Requiring the purchaser to check such documents despite the fact that the documents required for new registration in Japan were all there, brings unnecessary risk to the second hand car trading business and excessively harms the stability of trade. Thus, the Supreme Court acknowledged that A acquired ownership of the Car by instant acquisition and subsequent acquirers of the car up to the defendant have succeeded the ownership from A.

The views of academics on the applicable law in such cases are divided. Perhaps there are more who find the law of the place of registration or the place where the object should be returned to be applicable. There was scepticism as to the reasoning on this matter in the judgment of the second instance court.<sup>1</sup> This judgment is significant in that it has set a new precedent on this matter.<sup>2</sup>

---

1 See the comments on the second instance court judgment by H. MORITA in: *Jurisuto*, No.1193 (2001) p. 124.

2 The full text of this judgment can be found in the Supreme Court home page: [www.courts.go.jp](http://www.courts.go.jp)