

Remaining Issues of Choice of Law on Contract and Property in the Act on General Rules for Applicable Law (summary)

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This paper discusses choice of law issues of contract and property that have not been resolved by the enforcement of the Act on General Rules for Applicable Law (“Act”) enacted in 2006.

Special focus is placed on form of consumer contracts and meaning of *lex rei sitae*, because this author believes that these two issues need further legislative measures or clarification by interpretation.

First, the paper argues that Article 11, Paragraphs 3 and 4 of the Act (choice of law on the form of consumer contracts) are difficult for consumers to understand and are contrary to the predictability of the governing law by the parties. It proposes these provisions be deleted together with Paragraph 5 of Article 11. Instead, it argues that form of consumer contract should be governed solely by the law of the place of consumer’s habitual residence, regardless of the choice of law by the parties and without having a consumer invoke the law of its habitual residence.

Second, the author criticizes the Judgement of the Supreme Court of Japan in the Stolen Mercedes-Benz Case that fictitiously interpreted the principle of *lex rei sitae* to be the law of the place of origin of use (place of registration) though it denied the recovery claim by a German insurer based on the ownership holding that acquisition of the inoperative vehicle should be determined by the law of its physical presence. The paper argues that *lex rei sitae* as stipulated in Article 13 of the Act be limited to the law of the actual location, and that the connection point such as the place of destination for moving objects or the place of registration for means of transport should not be included in the concept of location.

Finally, an overview is given to other issues not discussed above, including the effectiveness of the transfer of claims against third parties. It is suggested that the law of the transferor’s habitual residence rather than the law of the transferred claim (provided in Article 24 of the Act) be proper to determine the third party effect of the collective transfer of a large number of claims or the registered transfer of claims.