

22. CONVENTION ON THE LAW APPLICABLE TO PRODUCTS LIABILITY¹

(Concluded 2 October 1973)

The States signatory to the present Convention,
Desiring to establish common provisions on the law applicable, in international cases, to products liability,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

This Convention shall determine the law applicable to the liability of the manufacturers and other persons specified in Article 3 for damage caused by a product, including damage in consequence of a misdescription of the product or of a failure to give adequate notice of its qualities, its characteristics or its method of use.

Where the property in, or the right to use, the product was transferred to the person suffering damage by the person claimed to be liable, the Convention shall not apply to their liability *inter se*.

This Convention shall apply irrespective of the nature of the proceedings.

Article 2

For the purposes of this Convention –

- a) the word "product" shall include natural and industrial products, whether raw or manufactured and whether movable or immovable;
- b) the word "damage" shall mean injury to the person or damage to property as well as economic loss; however, damage to the product itself and the consequential economic loss shall be excluded unless associated with other damage;
- c) the word "person" shall refer to a legal person as well as to a natural person.

Article 3

This Convention shall apply to the liability of the following persons –

- (1) manufacturers of a finished product or of a component part;
- (2) producers of a natural product;
- (3) suppliers of a product;
- (4) other persons, including repairers and warehousemen, in the commercial chain of preparation or distribution of a product.

It shall also apply to the liability of the agents or employees of the persons specified above.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Douzième session (1972)*, Tome III, *Responsabilité du fait des produits* (ISBN 90 12 00114 5, 277 pp.).

Article 4

The applicable law shall be the internal law of the State of the place of injury, if that State is also –

- a) the place of the habitual residence of the person directly suffering damage, or
- b) the principal place of business of the person claimed to be liable, or
- c) the place where the product was acquired by the person directly suffering damage.

Article 5

Notwithstanding the provisions of Article 4, the applicable law shall be the internal law of the State of the habitual residence of the person directly suffering damage, if that State is also –

- a) the principal place of business of the person claimed to be liable, or
- b) the place where the product was acquired by the person directly suffering damage.

Article 6

Where neither of the laws designated in Articles 4 and 5 applies, the applicable law shall be the internal law of the State of the principal place of business of the person claimed to be liable, unless the claimant bases his claim upon the internal law of the State of the place of injury.

Article 7

Neither the law of the State of the place of injury nor the law of the State of the habitual residence of the person directly suffering damage shall be applicable by virtue of Articles 4, 5 and 6 if the person claimed to be liable establishes that he could not reasonably have foreseen that the product or his own products of the same type would be made available in that State through commercial channels.

Article 8

The law applicable under this Convention shall determine, in particular –

- (1) the basis and extent of liability;
- (2) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (3) the kinds of damage for which compensation may be due;
- (4) the form of compensation and its extent;
- (5) the question whether a right to damages may be assigned or inherited;
- (6) the persons who may claim damages in their own right;
- (7) the liability of a principal for the acts of his agent or of an employer for the acts of his employee;
- (8) the burden of proof insofar as the rules of the applicable law in respect thereof pertain to the law of liability;
- (9) rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation, and the interruption and suspension of this period.

Article 9

The application of Articles 4, 5 and 6 shall not preclude consideration being given to the rules of conduct and safety prevailing in the State where the product was introduced into the market.

Article 10

The application of a law declared applicable under this Convention may be refused only where such application would be manifestly incompatible with public policy ("*ordre public*").

Article 11

The application of the preceding Articles shall be independent of any requirement of reciprocity. The Convention shall be applied even if the applicable law is not that of a Contracting State.

Article 12

Where a State comprises several territorial units each of which has its own rules of law in respect of products liability, each territorial unit shall be considered as a State for the purposes of selecting the applicable law under this Convention.

Article 13

A State within which different territorial units have their own rules of law in respect of products liability shall not be bound to apply this Convention where a State with a unified system of law would not be bound to apply the law of another State by virtue of Articles 4 and 5 of this Convention.

Article 14

If a Contracting State has two or more territorial units which have their own rules of law in respect of products liability, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial units to which the Convention applies.

Article 15

This Convention shall not prevail over other Conventions in special fields to which the Contracting States are or may become Parties and which contain provisions concerning products liability.

Article 16

Any Contracting State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right –

- (1) not to apply the provisions of Article 8, sub-paragraph 9;
- (2) not to apply this Convention to raw agricultural products.

No other reservations shall be permitted.

Any Contracting State may also when notifying an extension of the Convention in accordance with Article 19, make one or more of these reservations, with its effect limited to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

Article 17

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 18

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with Article 20.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 19

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 20

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in the second paragraph of Article 17. Thereafter the Convention shall enter into force

- for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- for each acceding State, on the first day of the third calendar month after the deposit of its instrument of accession;
- for a territory to which the Convention has been extended in conformity with Article 19, on the first day of the third calendar month after the notification referred to in that Article.

Article 21

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 20, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 22

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference and the States which have acceded in accordance with Article 18, of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 17;
- (2) the date on which this Convention enters into force in accordance with Article 20;
- (3) the accessions referred to in Article 18 and the dates on which they take effect;
- (4) the extensions referred to in Article 19 and the dates on which they take effect;
- (5) the reservations, withdrawals of reservations and declarations referred to in Articles 14, 16 and 19;
- (6) the denunciations referred to in Article 21.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 2nd day of October, 1973, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session.