



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
RESTRICTED

A/CN.9/WG.1/WP.22
23 July 1971

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Working Group on time-limits and
limitations (prescription) in
the international sale of goods
Third session
New York, 30 August 1971

REPORT ON PRODUCTS LIABILITY: DEATH AND INJURIES
CAUSED TO PERSONS AND DAMAGES CAUSED TO GOODS

Prepared by Mr. M.H. van Hoogstraten
(Secretary-General of the Hague Conference
on Private International Law)

Article 7 of the preliminary draft of the Uniform Law deals with limitation periods, "in respect of any right arising out of a breach of the contract".

The report (A/CN.9/50) states on page 11:

"Where a claim by the buyer against the seller arises from the contract and is based on pecuniary loss from personal injuries to persons other than himself, such claim is not excluded from this Uniform Law."

The annex A to the report raises certain questions. We have been asked to discuss the particular aspects of cases where death or injury is caused to persons, or damage is caused to goods, and where there may be room for an action based on tort (including products liability) in addition to, or alternatively to, an action based on breach of contract.

On a breach of contract courts may award compensation for damages. These damages may be limited to the reduction in value of the goods sold, or they may also include damage caused to other goods and to persons.

Four cases may be distinguished; the breach of contract may have caused:

1. (death or) personal injury to the buyer;
2. damage to other property of the buyer;
3. (death or) personal injury to a third person;
4. damage to property of a third person.

First case

This has already been excluded from the scope of the Uniform Law by article 2 (a) of the draft.

Second case

This case need not present any difficulties provided that the damage is caused by a breach of contract. The following, however, should be noted: In a number of cases,^{1/} where there is a breach of contract, certain law systems do not allow for any action for damages other than that based on the contract; on the other hand, a number of other systems also admit actions on the ground of tort, including products liability. (In some systems both actions may be brought concurrently,

^{1/} Not in all; see French Cour de Cassation, Code Civ. 13 mai 1966 Dalloz 1956, p. 53.

in others the plaintiff has to choose the one or the other ground for liability; see on this point studies of the Council of Europe and of the Hague Conference on Private International Law.)^{2/} This would affect the degree of uniformity and security that the Uniform Law could ensure: any action based on tort would not be subject to the limitations of the Uniform Law. A plaintiff wishing to know whether his right of action would expire after 3 to 5 years would have to know on which ground he would be permitted to bring his action in the court having jurisdiction; in other words he would have to know how his claim was likely to be characterized. Cases 3 and 4 can be examined together, but certain additional distinctions need to be made: A. the third person bought the goods himself from the first buyer; B. the third person has no contractual link with the first buyer (case of the independent bystander).

In order to be quite clear, it may be recalled that we deal here with the claim of the buyer brought against the seller; this time his claim is not based on the damage suffered by himself, but on the loss he suffered when he had to compensate a third person who was injured or damaged.

A. The third person bought the goods himself from the first buyer

When the buyer is held liable for a breach of contract towards the third person (the second buyer, to whom he sold the goods) there is no ambiguity, as long as he sues the seller for a breach of contract. As was explained before, in some systems this may be the only way open to him. In others, however, he may sue in tort, and this would allow him to circumvent the limitation-period laid down in the Uniform Law. The unifying effect of the Uniform Law may therefore, as in case 2, be limited.

However, in the simplest case, when the third person and the buyer both sue for a breach of contract, one additional difficulty may present itself.

Article 7 fixing the commencing of the limitation period at the breach of contract may have as an unexpected result - particularly in the case of goods which have been kept in a storehouse for some time by the buyer - that by the time

^{2/} For the latter see report by M.L. Saunders on products liability in the conflict of laws, p. 9-10; The Hague, National Printing Office, 1969.

the third person brings his action (which he may choose to do towards the end of the limitation period applying to his contract) the time-limit for the action on the first contract of sale may have elapsed.^{3/} It would seem that this particular difficulty could only be remedied by making the period of limitation for the first buyer commence at the moment of the damage, and not at that of the breach of contract committed by the seller (cf. annex A to the report A/CN.9/50).

B. The third person has no contractual link with the first buyer

In the cases of injury or damage caused to an "independent bystander" the only action open to the "bystander" will have to be based on tort (including products liability).

In the first paragraph on distinction A the following question was raised: Can a buyer, who had been condemned to pay on the basis of a breach of contract, sue his seller on the basis of tort? One may also, conversely, ask the following question: Can the buyer who was held liable in an action based on tort or products liability (which, it may be repeated, is possible in a number of law systems even if there was a contract between the buyer and the third person) base his action against the seller on the basis of breach of contract? Whenever this is possible the complication mentioned in the preceding paragraph may be even more important, particularly when the third person's action in tort may be validly brought during a period of limitation which is longer than the $\sqrt{3}$ to $\sqrt{5}$ years of the draft. In these cases, the reasons for making a special provision for the commencement of the period of limitation would appear to be even more compelling.

Conclusion

In view of the fact that damage to goods (other than those sold) and injury or death to persons may give rise to various actions, the wisdom of adopting uniform rules on limitations in those cases applying only to actions based on a breach of contract seems questionable. This is particularly true because, in the different law systems, the boundary between the scope of the action for tort and the scope of actions for breach of contract are not traced in the same manner. The uniformity which it is sought to obtain can, at best, be ensured only partially, and even then in a varying degree in different States.

^{3/} It may be noted in this context that the time-limits in article 39, paragraph 1, last sentence (2 years) and 49 (one year) of ULIS are considerably shorter than the $\sqrt{3}$ to $\sqrt{5}$ of the draft, so that this effect may make itself felt even more strongly under ULIS.