

## RECHTSPRECHUNG / JURISPRUDENCE

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

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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