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Title: Prawo właściwe dla odpowiedzialności za szkodę wyrządzoną przez produkt według art. 5 Rzym II / The law applicable to product liability pursuant to Article 5 of Rome II Regulation

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Abstract:

Damage caused by a product is one of five examples of liability in tort excluded from the scope of application of the general rule (Art. 4) of Rome II Regulation and treated differently. A justification for this decision is that damage resulting from a product is frequently a multilocal or complex tort - the event giving rise to damage occurs in a different time and place than the damage itself. Thus the criterion adopted in Art. 4 for determining the applicable law, that is, the place where the damage occurred, should not be applied to damage resulting from a product, as this would lead to arbitrary conclusions which would be unforeseeable to liable persons, and which would also often turn out to be surprising and unfavourable for the victim. The full harmonization of the law of product liability undertaken in the European Union is only a partial solution to the conflict of law issue, because the Rome II Regulation governs conflicts of law where non-EU countries are also involved and the regulation in the Product Liability Directive is limited in its subjective scope, leaving the product liability laws of the Member States to some extent unharmonized.

This article discusses objectives of the provisions contained in Art. 5 of the Rome II Regulation and specific problems of its interpretation such as the concept of ‘product liability’ and ‘damage caused by a product’ for the purpose of conflict of laws rules, the meaning of the requirement of marketing of the product in a certain country as well as types and hierarchy of connections provided in Art. 5 of Rome II Regulation.