

CHOICE OF LAW - CONTRACT:

United States Surgical Corporation v. Hospital Products International Pty. Ltd. [1983] 2 NSWLR 157 (N.S.W. Supreme Court, Court of Appeal).

The plaintiff manufactured and sold surgical stapling instruments and disposable loading units. One of its dealers came to Australia and had the defendant appointed exclusive Australian distributor of the plaintiff's surgical goods. Then the defendant began to produce virtually identical goods in Australia and applied for a registration of an identical trademark. The defendant then terminated the distributorship which was accepted. The contract for the distributorship had not contained an express choice of law. The conduct of the parties did not enable an intention to be inferred. The Court therefore sought to identify the system of law with which the contract had its closest and most real connection. This was the law of New York and Connecticut. The law of New South Wales, however, was to be applied in determining the relief available except to the extent that material difference might be proved between the law of New South Wales and the proper law. The case is presently on appeal before the High Court of Australia.