



Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer
Ferrara 2015

§ 2 Sources of PIL regarding contractual and non-contractual obligations

- I. On the European Level
- II. On the World Wide Level
- III. On the National Level

Convention on the International Sale of Goods, (CISG)

- Sphere of Application
 - Art. 1 CISG
 - **Case 1:** Seller in Bologna, Buyer in Munich; CISG applies (Art. 1 (1) a))

Convention on the International Sale of Goods, (CISG)

- Sphere of Application
 - **Case 2:** Seller in London, Buyer in Bologna; CISG does not apply, neither according to Art. 1 (1) lit a) nor according to Art. 1 (1) lit b). Art. 4 (1) lit a) Rome I does not „lead to the application of the law of a Contracting State“ (UK is not a Contracting State to the CISG)

Convention on the International Sale of Goods, (CISG)

- Sphere of Application
 - **Case 3:** Seller in Bologna, Buyer in London; CISG does apply, according to Art. 1 (1) lit b).

Convention on the International Sale of Goods, (CISG)

- Sphere of Application
- Material scope
- Opting out of the CISG by contract

Opting out of the CISG by contract

Case 4: The seller's place of business is in Bologna, the buyer's place of business is in London. The contract contains the following choice of law clause: „This contract shall be governed by Italian law.“

Convention on the International Sale of Goods, (CISG)

Art. 6 CISG:

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

Opting out of the CISG by contract

Case 5: The seller's place of business is in Bologna, the buyer's place of business is in London. The contract contains the following choice of law clause: „This contract shall be governed by Italian law. The application of the CISG shall be excluded.“

§ 2 Sources of PIL regarding contractual and non-contractual obligations

- I. On the European Level
- II. On the World Wide Level
- III. On the National Level

Sources of PIL on the national level

- Example 1: Italy (Codification of PIL in 1995)
- Example 2: Germany (Codification of PIL in 1986/1999)
- Relationship between European and National Rules on PIL

Example 1: Italy (Codification of PIL in 1995)

Legge 31 maggio 1995, n. 218,
Riforma del sistema italiano di diritto
internazionale privato. (in Suppl. ordinario n.
68, alla Gazz. Uff. n. 128, del 3 giugno
1995)

Example 1: Italy (Codification of PIL in 1995)

Art. 1. Oggetto della legge.

1. La presente legge determina l'ambito della giurisdizione italiana, pone i criteri per l'individuazione del diritto applicabile e disciplina l'efficacia delle sentenze e degli atti stranieri.

Example 1: Italy (Codification of PIL in 1995)

Art. 2. Convenzioni internazionali.

1. Le disposizioni della presente legge non pregiudicano l'applicazione delle convenzioni internazionali in vigore per l'Italia.

2. Nell'interpretazione di tali convenzioni si terrà conto del loro carattere internazionale e dell'esigenza della loro applicazione uniforme.

Example 1: Italy (Codification of PIL in 1995)

Art. 57. Obbligazioni contrattuali.

1. Le obbligazioni contrattuali sono in ogni caso regolate dalla Convenzione di Roma del 19 giugno 1980 sulla legge applicabile alle obbligazioni contrattuali, resa esecutiva con la legge 18 dicembre 1984, n. 975, senza pregiudizio delle altre convenzioni internazionali, in quanto applicabili.

Example 1: Italy (Codification of PIL in 1995)

Art. 46. Successione per causa di morte.

1. La successione per causa di morte è regolata dalla legge nazionale del soggetto della cui eredità si tratta, al momento della morte.

2. Il soggetto della cui eredità si tratta può sottoporre, con dichiarazione espressa in forma testamentaria, l'intera successione alla legge dello Stato in cui risiede.

Example 2: Germany (Codification of PIL in 1986/1999)

Art. 25 EGBGB Succession

(1) Succession is governed by the law of the country of which the deceased was a national at the time of his death.

Relationship between European and National Rules on PIL

Article 21 Regulation EU No 650/2012 (General rule on Succession)

1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

Relationship between European and National Rules on PIL

Article 22 (Choice of law)

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

Relationship between European and National Rules on PIL

Art. 3 EGBGB

(1) Unless

1. immediately applicable rules of the European Community in their respective pertaining version, particularly

a) the Regulation (EC) No. 864/2007 [...] (Rome II), and

b) the Regulation (EC) No. 593/2008 (Rome I), and
[...], or

2. rules in international conventions, insofar as they have become directly applicable in national law,

are relevant, the applicable law is to be determined, where the facts of a case have a connection with a foreign country, by the provisions of this chapter (private international law).

Part II: Jurisdiction to adjudicate

- ③ The General and Main Rule of the Defendant's Domicile (Art. 4 Brussels I *bis*)
- ④ Outline and Scope of the Regulation Brussels I *bis*
- ⑤ Purpose and Grounds of Alternative Jurisdiction
- ⑥ Matters relating to contracts
- ⑦ Matters relating to torts

Article 4 (1) Brussels I *bis* Regulation

(1) Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

- Main rule of jurisdiction to adjudicate
- Meaning of General jurisdiction

§ 3 The General and Main Rule of the Defendant's Domicile (Art. 4 Brussels I *bis*)

- The meaning of the rule „actor sequitur forum rei“
- Exceptions to the rule

Exceptions to the general rule and different kinds of jurisdiction to adjudicate

- General Jurisdiction
- Exclusive Jurisdiction

Example: Article 24 (1) Brussels I *bis* Regulation

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

[...]

Different kinds of jurisdiction to adjudicate

- General Jurisdiction
- Exclusive Jurisdiction
- Special Jurisdiction
- Concurring, alternative heads of jurisdiction

Example: Article 7 (1) Brussels I *bis* Regulation

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

[...]

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

[...]

Different kinds of jurisdiction to adjudicate

- General Jurisdiction
- Exclusive Jurisdiction
- Special Jurisdiction
- Choice of court agreements

Article 25 (1) Brussels I *bis* Regulation

1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. [...]