



Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer
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Article 7 (2) Brussels I bis Regulation

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

[...]

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

[...]

§ 7 Matters relating to torts

- I. Structure of Article 7 (2)
 1. „Matters relating to tort, delict or quasi-delict“
 2. "place where the harmful event occurred“

Matters relating to tort: Kalfelis v. Schröder (ECJ, case 189/87 (1988))

18. [...] the term 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5 (3) of the Convention must be regarded as an independent concept covering all actions which seek to establish the liability of a defendant and which are not related to a 'contract' within the meaning of Article 5 (1).

"place where the harmful event occurred"

place of the
harmful act

State A

?

place of the
resulting damage

State B

"place where the harmful event occurred"
Bier v. Mines de Potasse (ECJ, case 21/76
(1976))

29. [...] the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage.

§ 7 Matters relating to torts

I. Structure of Article 7 (2)

1. „Matters relating to tort, delict or quasi-delict“
2. "place where the harmful event occurred“
3. „or may occur“ (preventive actions)
4. Jurisdiction of the court for the place of the resulting damage limited to the “direct” and “immediate” damage

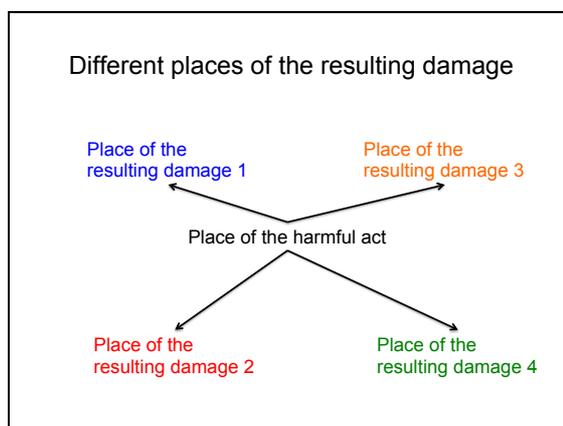
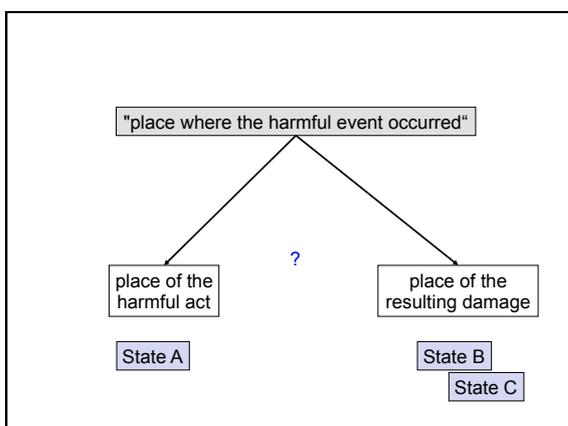
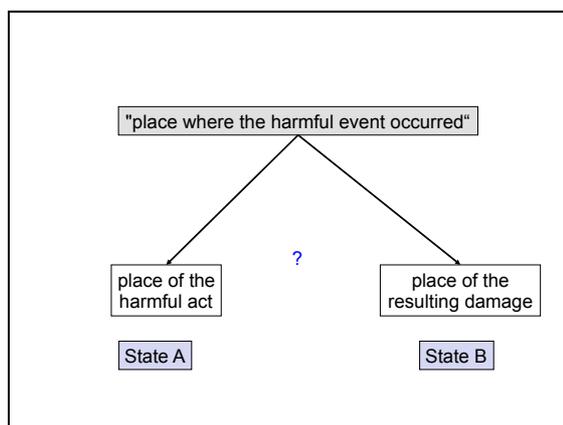
“Immediate” damage: Marinari v. Lloyd’s Bank (ECJ, case C- 364/93 (1995))

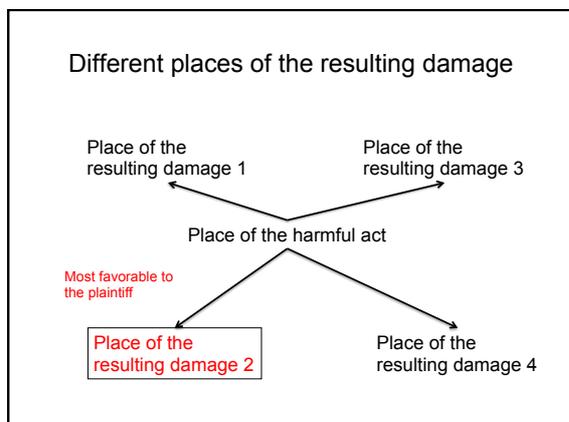
21. [...] the term 'place where the harmful event occurred' [...] does not, on a proper interpretation, cover the place where the victim claims to have suffered financial damage following upon initial damage arising and suffered by him in another Contracting State.

§ 7 Matters relating to torts

I. Structure of Article 7 (2)

II. Cases with more than one place of the resulting damage





Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

3. According to the documents before the Court, on 23 September 1989 Presse Alliance SA, which publishes the newspaper France-Soir, published an article about an operation which drug squad officers of the French police had carried out at one of the bureaux de change operated in Paris by Chequepoint SARL. That article [...] mentioned the company "Chequepoint" and "a young woman by the name of Fiona Shevill-Avril".

Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

5. Fiona Shevill was temporarily employed for three months in the summer of 1989 by Chequepoint SARL in Paris. She returned to England on 26 September 1989.

Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

8. Miss Shevill, Chequepoint SARL, Ixora Trading Inc. and Chequepoint International Ltd considered that the abovementioned article was defamatory in that it suggested that they were part of a drug-trafficking network for which they had laundered money. [...] Since under English law there is a presumption of damage in libel cases, the plaintiffs did not have to adduce evidence of damage arising from the publication of the article in question.

Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

9. It is common ground that France-Soir is mainly distributed in France and that the newspaper has a very small circulation in the United Kingdom, effected through independent distributors. It is estimated that more than 237 000 copies of the issue of France-Soir in question were sold in France and approximately 15 500 copies distributed in the other European countries, of which 230 were sold in England and Wales (5 in Yorkshire).

Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

16. [...] the House of Lords by order of 1 March 1993 decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

"1. In a case of libel by a newspaper article, do the words 'the place where the harmful event occurred' in Article 5(3) of the Convention mean:

- (a) the place where the newspaper was printed and put into circulation; or
- (b) the place or places where the newspaper was read by particular individuals; or
- (c) the place or places where the plaintiff has a significant reputation? [...]"

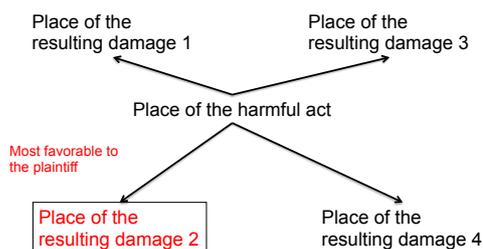
Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

33. [...] the expression "place where the harmful event occurred" in Article 5(3) of the Convention, the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation,

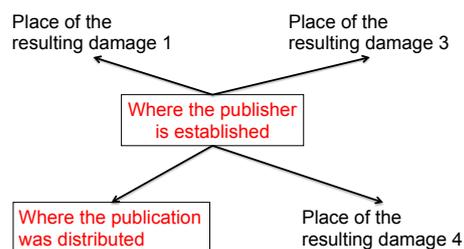
Shevill v. Press Alliance (ECJ, case C-68/93 (1995))

33. [...] or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised.

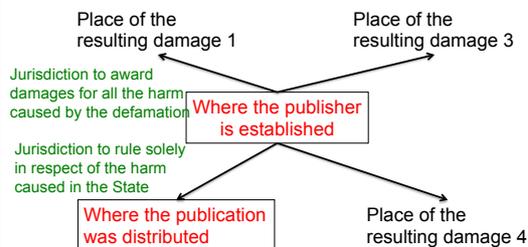
Different places of the resulting damage



„Shevill“



„Shevill“



§ 7 Matters relating to torts

- I. Structure of Article 7 (2)
- II. Cases with more than one place of the resulting damage
 1. “Shevill”-doctrine
 2. Problems raised by the application of the “Shevill”-doctrine
 3. “eDate”-doctrine

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

15. In 1993, X, who is domiciled in Germany, was sentenced by a German court, together with his brother, to life imprisonment for the murder of a well-known actor. He was released on parole in January 2008.

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

16. eDate Advertising, which is established in Austria, operates an internet portal under the address 'www.rainbow.at'. In the section 'Info-News', [...] the defendant made access to a report [...]. which named X and his brother [...].
18. By his action before the German courts, X calls upon eDate Advertising to refrain from using his full name when reporting about him in connection with the crime committed.

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

25. Before the Tribunal de grande instance de Paris (Paris Regional Court), the French actor Olivier Martinez and his father, Robert Martinez, complain of interference with their private lives and infringement of the right of Olivier Martinez to his image by reason of the posting, on the website accessible at the internet address 'www.sundaymirror.co.uk', of a text in English, dated 3 February 2008, entitled 'Kylie Minogue is back with Olivier Martinez', with details of their meeting.

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

47. The difficulties in giving effect, within the context of the internet, to the criterion relating to the occurrence of damage which is derived from *Shevill and Others* contrasts, as the Advocate General noted at point 56 of his Opinion, with the serious nature of the harm which may be suffered by the holder of a personality right who establishes that information injurious to that right is available on a world-wide basis.

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

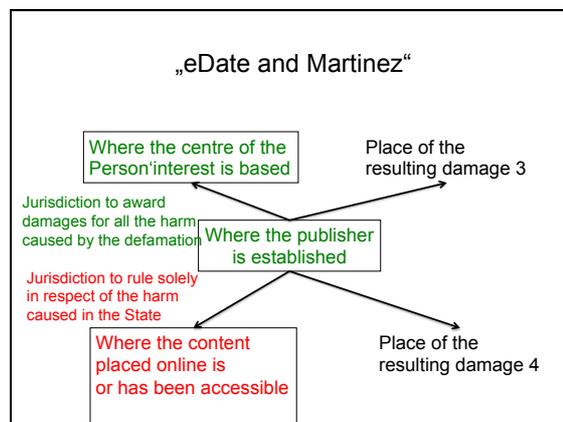
48. The connecting criteria [...] must therefore be adapted in such a way that a person who has suffered an infringement of a personality right by means of the internet may bring an action in one forum in respect of all of the damage caused, depending on the place in which the damage caused in the European Union by that infringement occurred. [...]

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

48. [...] Given that the impact which material placed online is liable to have on an individual's personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests [...]

eDate Advertising and Martinez (ECJ, joined cases C-509/07 and C-161/10 (2011))

49. The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.



§ 7 Matters relating to torts

- I. Structure of Article 7 (2)
- II. Cases with more than one place of the resulting damage
- III. Consequences of “Shevill” and “eDate” regarding the determination of the applicable law