



Private International Law of Contractual and Non-Contractual Obligations

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Part V: The Law Applicable to Cross-Border Non-Contractual Obligations

- § 22 Material scope and general issues of the Rome II Regulation
- § 23 The general rule in Art. 4 Rome II regarding torts
- § 24 Culpa in contrahendo (Art. 12 Rome II)
- § 25 Freedom of choice (Art. 14 Rome II)
- § 26 Torts under the national rules of Private International Law

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§ 22 Material scope and general issues of the Rome II Regulation

- Material scope of Regulation Rome I, Art. 1
- Non contractual obligation, Article. 2
- Article 3, Universal Application: Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.
- Application in time, Article 31

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§ 23 The general rule in Art. 4 Rome II regarding torts

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the **law of the country in which the damage occurs** irrespective of the country in which the event giving rise to the damage occurred and **irrespective of** the country or countries in which the indirect consequences of that event occur.

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§ 23 The general rule in Art. 4 Rome II regarding torts

2. However, where the person claimed to be liable and the person sustaining damage both have their **habitual residence in the same country** at the time when the damage occurs, the law of that country shall apply.

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§ 23 The general rule in Art. 4 Rome II regarding torts

3. Where it is clear from all the circumstances of the case that the tort/delict is **manifestly more closely connected** with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based **in particular** on a **pre-existing relationship** between the parties, such as a contract, that is closely connected with the tort/delict in question.

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§ 25 Freedom of choice (Art. 14 Rome II)

- Party autonomy in non-contractual obligations
- Distinction in time: before and after the event giving rise to the damage occurred.
- Some differences between freedom of choice in Article 3 Rome I and Article 14 Rome II Regulation
 - „reasonable certainty“ vs. „clearly demonstrated“
 - Art. 3 (5) Rome I Regulation?

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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)

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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.

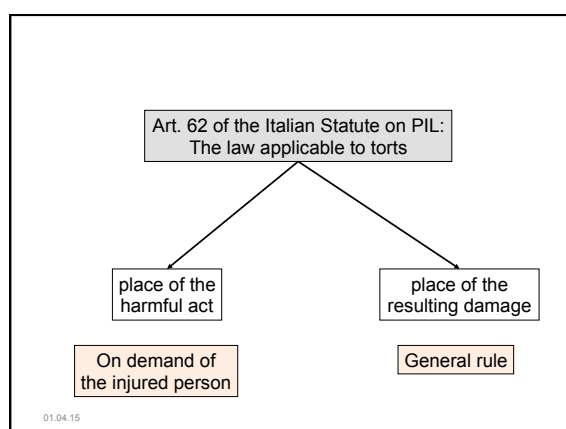
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Example 1: Italy (Codification of PIL in 1995)

Art. 62. Responsabilità per fatto illecito.

1. La responsabilità per fatto illecito è regolata dalla legge dello Stato in cui si è **verificato l'evento**. Tuttavia il danneggiato può chiedere l'applicazione della legge dello Stato in cui si è **verificato il fatto che ha causato il danno**.
2. Qualora il fatto illecito coinvolga soltanto cittadini di un medesimo Stato in esso residenti, si applica la legge di tale Stato.

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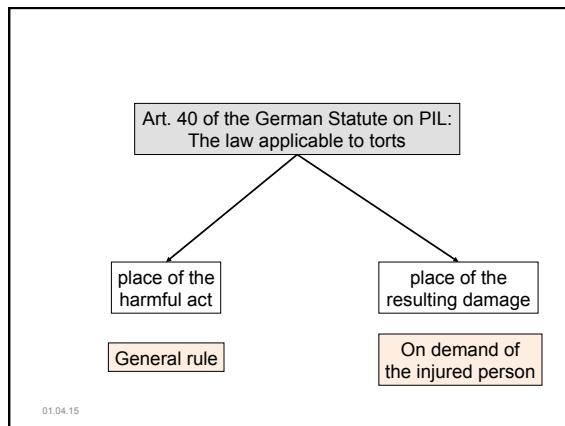
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Example 2: Germany (Codification of PIL in 1986/1999)

Art. 40 Tort

(1) Tort claims are governed by the law of the country in which the **liable party has acted**. The injured party can demand that instead of this law, the law of the country in which the **injury occurred** is to be applied. The option can be used only in the first instance court until the conclusion of the pretrial hearing or until the end of the written preliminary procedure.

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IV. Consequences of "Shevill" and "eDate" regarding the determination of the applicable law

1. The limited material scope of Regulation Rome I
2. National PIL rules regarding the infringement of personality rights:
Possible "indirect" impacts of the eDate doctrine on the interpretation of the national conflict rules.

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