

## Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer  
 Ferrara 2015

### § 1 Some basic notion of Private International Law

#### I. Jurisdiction to adjudicate

#### Jurisdiction to Adjudicate

**Case 1:** An Italian company with its place of business in Rome and a French company with its place of business in Paris conclude a contract about the delivery of 2.000 shoes. The shoes are delivered from Rome to Paris. The French buyer does not pay the price as agreed upon. The Italian seller brings an action against the French company before an English court in London. What will the English court analyze at first?

#### Jurisdiction to Adjudicate

**Case 2:** In case No. 1, the Italian company does not bring the action against the French company before an English court, but before a French court in Paris. What makes the difference to the first case?

#### 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.

### § 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships

The law applicable to cross-border legal relationships

**Case 3:** After accepting its own jurisdiction to adjudicate in case No. 2, the French court will analyze the question which law applies to the contract between the parties.

Article 4 (1) letter a) Rome I Regulation

- (1) To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 [...], the law governing the contract shall be determined as follows:
- a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence; [...]

§ 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships
  - 1. The purpose and structure of a conflict rule

Purpose and Structure of a conflict rule

- Difference between a substantive rule and a conflict rule
- Conflict rules as „rules about applicable rules“ (Bogdan)

Purpose and Structure of a conflict rule

- Art. 46 para 1 of the Italian Statute on PIL as an example:
- “La successione per causa di morte è regolata dalla legge nazionale del soggetto della cui eredità si tratta, al momento della morte.”

§ 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships
  - 1. The purpose and structure of a conflict rule
  - 2. **Connecting factors** of some basic conflict rules (examples)

Connecting factors of some basic conflict rules (examples)

- Party autonomy (Freedom of choice)

Article 3 (1) Rome I Regulation –  
Freedom of choice

(1) A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

Connecting factors of some basic conflict rules (examples)

- Party autonomy (Freedom of choice)
- Habitual residence of a certain person

Article 4 (1) letter a) Rome I Regulation

(1) To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 [...], the law governing the contract shall be determined as follows:

a) a contract for the sale of goods shall be governed by the law of the country **where the seller has his habitual residence**; [...]

Connecting factors of some basic conflict rules (examples)

- Party autonomy (Freedom of choice)
- Habitual residence of a certain person
- Place where a damage occurs

Article 4 (1) Rome II Regulation

(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 [...].

#### Connecting factors of some basic conflict rules (examples)

- Party autonomy (Freedom of choice)
- Habitual residence of a certain person
- Place where a damage occurs
- Common habitual residence of two persons in the same country

#### Article 4 (2) Rome II Regulation

- (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.

#### § 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships
  1. The purpose and structure of a conflict rule
  2. Connecting factors of some basic conflict rules (examples)
  3. **The problem of characterization**

#### § 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships
  1. The purpose and structure of a conflict rule
  2. Connecting factors of some basic conflict rules (examples)
  3. The problem of characterization
- III. Parallel proceedings**

#### Parallel proceedings

**Case 4:** An Italian company with its place of business in Rome and a French company with its place of business in Paris conclude a contract about the delivery of 2.000 shoes. The shoes are delivered from Rome to Paris. The French buyer does not pay the price as agreed upon. The Italian seller brings an action against the French company before an Italian court in Rome. Subsequently, the French company brings an action against the Italian company in Paris for the declaration that the contract between the parties is void.

#### Article 29 (1) Brussels I bis Regulation

- (1) [...] where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

§ 1 Some basic notion of Private International Law

- I. Jurisdiction to adjudicate
- II. The law applicable to cross-border legal relationships
- III. Parallel proceedings
- IV. Recognition and enforcement of foreign judgments**

Recognition and enforcement of foreign judgments

**Case 5:** In case No. 4, the Italian court renders a judgment in favor of the Italian company. Since the main assets of the French company are located in France, the Italian company wishes to have the Italian judgment recognized and enforced in France.

Article 39 Brussels I *bis* Regulation

A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Part I: General Introduction

- § 1 Some basic notion of Private International Law
- § 2 Sources of PIL regarding contractual and non-contractual obligations

§ 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