



 JURISTISCHE
FAKULTÄT

Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer
Ferrara 2015

Part I: General Introduction

§ 1 Some basic notion of Private International Law

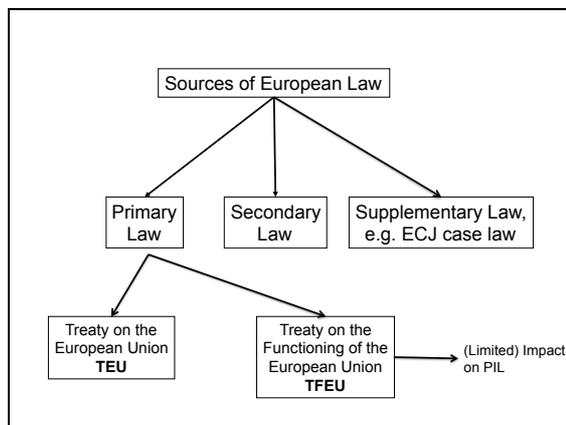
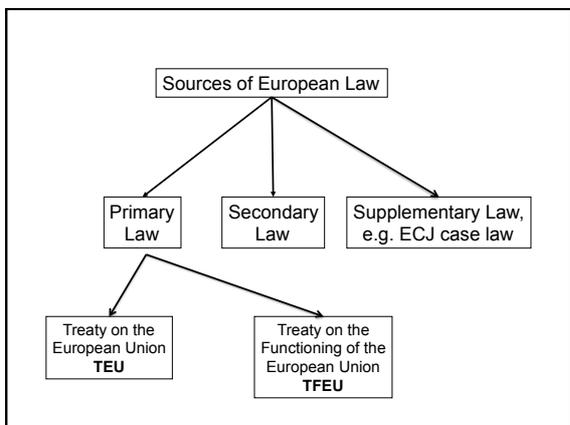
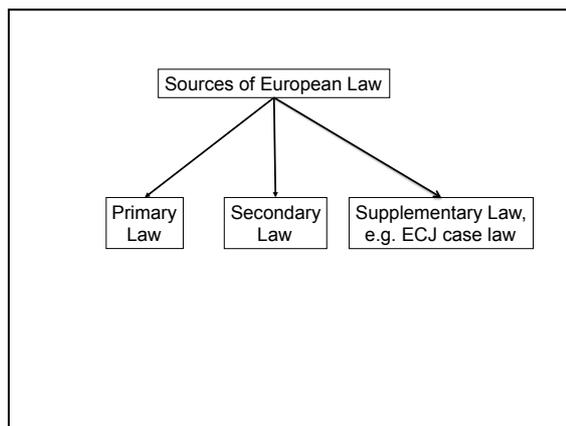
§ 2 Sources of PIL regarding contractual and non-contractual obligations

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

I. On the European Level

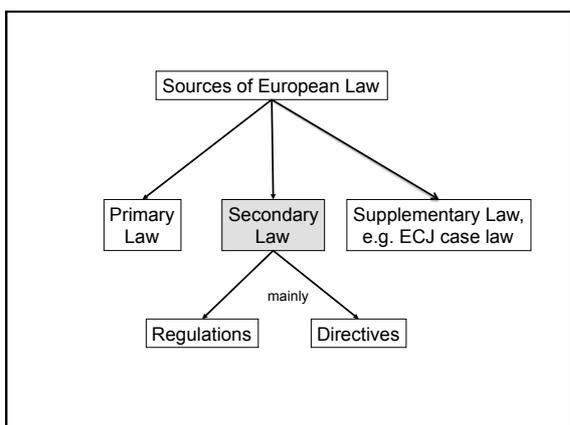
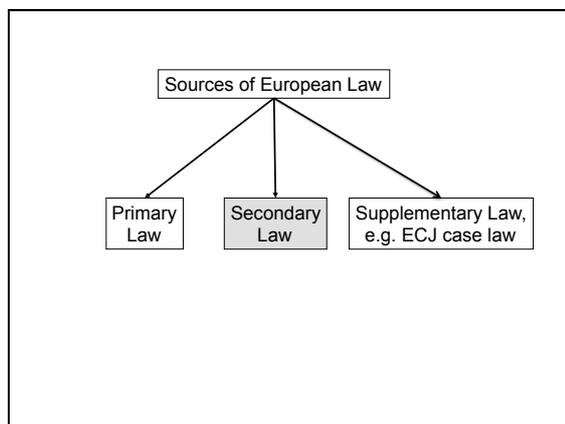
II. On the World Wide Level

III. On the National Level



European sources of PIL

- Only limited impact of the TFEU on PIL issues, Examples:
 - Freedom of establishment (Art. 49, 54 TFEU) and the legal capacity of companies
 - Freedom of movement (Art. 21 TFEU) and the surname of a person



```

    graph TD
      A[Sources of European Law] --> B[Primary Law]
      A --> C[Secondary Law]
      A --> D[Supplementary Law, e.g. ECJ case law]
      C -- mainly --> E[Regulations]
      C -- mainly --> F[Directives]
    
```

Art. 288 para 1 TFEU: „To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.“

```

    graph TD
      A[Secondary Law] --> B[Regulations]
      A --> C[Directives]
    
```

Art. 288 para. 2 TFEU:
 „A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.“

Art. 288 para. 3 TFEU:
 „A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.“

```

    graph TD
      A[European legislator's choice between the instruments] --> B[Regulations]
      A --> C[Directives]
    
```

Unification of Law **Harmonization of Law**

Sources of PIL on the European Level

- Different sources of EU Law
- **Regulation Brussels I bis** No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
 - "bis" means second version
 - Applies from 10 January 2015 (Art. 81)

Sources of PIL on the European Level

- Predecessor: Brussels I Regulation (in force from 1 March 2002 till January 2015)
- Predecessor: Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (27 September 1968)

Sources of PIL on the European Level

- Different sources of EU Law
- Regulation **Brussels I bis**
- Regulation No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (**Rome I**)
 - Application from 17 December 2009
 - Predecessor: Rome Convention on the Law Applicable to Contractual Obligations of 1980

Sources of PIL on the European Level

- Regulation No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (**Rome II**)
 - Without predecessor on the European level
 - Important parts excluded from the material scope, e.g. „rights relating to personality, including defamation“ (Art. 1 No 2 lit (g))

§ 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 World wide Level

- Hague Convention on Choice of Court Agreements
- Hague (draft) Principles on Choice of Law for International Contracts
- The particular role of the Vienna Convention (CISG – Convention on the International Sale of Goods) - Sphere of application and relationship with Rome I

CISG Contracting States



Case 1

The seller (S) is an Italian company with its place of business in Bologna and specialized on the construction of measuring devices. For a couple of years, the company has been selling the machines on a regular basis to the buyer (B), a German company with its place of business in Munich. The contract between S and B does not contain a Choice of court agreement and it does not address the question of the law applicable to the relationship between the parties. B complains about the quality of the devices and does not pay the whole price. S thinks about taking legal actions against B and wonders which law will govern their contract.

Convention on the International Sale of Goods, (CISG)

Art. 1 (1) CISG:

This Convention applies to contracts of sale of goods between parties whose places of business are in different States,

- a) when the States are Contracting States; or
- b) when the rules of private international law lead to the application of the law of a Contracting State.

Art. 53 CISG:

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Relationship between Regulation Rome I and CISG

- Art. 25 (1) Rome I:
„This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.“

Case 2

In case No. 1, the seller's place of business is not in Bologna but in London, and the buyer's place of business is in Bologna.

Convention on the International Sale of Goods, (CISG)

Art. 1 (1) CISG:

This Convention applies to contracts of sale of goods between parties whose places of business are in different States,

- a) when the States are Contracting States; or
- b) when the rules of private international law lead to the application of the law of a Contracting State.

Art. 53 CISG:

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Case 3

The seller's place of business is in Bologna,
the buyer's place of business is in London.

Convention on the International Sale of Goods,
(CISG)**Art. 1 (1) CISG:**

This Convention applies to contracts of sale of goods
between parties whose places of business are in
different States,

- a) when the States are Contracting States; or
- b) when the rules of private international law lead to the
application of the law of a Contracting State.

Art. 53 CISG:

The buyer must pay the price for the goods and take
delivery of them as required by the contract and this
Convention.

Convention on the International Sale of Goods,
(CISG)

- Sphere of Application
- Material scope

Convention on the International Sale of Goods,
(CISG)**Art. 2 CISG:**

This Convention does not apply to sales:

- (a) of goods bought for personal, family or
household use, unless the seller, at any time
before or at the conclusion of the contract, neither
knew nor ought to have known that the goods were
bought for any such use;
[...]

Convention on the International Sale of Goods,
(CISG)

- Sphere of Application
- Material scope
- Opting out 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 is 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