



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

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Ferrara 2015

## 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

### § 4 Outline and scope of the Regulation Brussels I *bis*

- Material scope; Art. 1 (1): „This Regulation shall apply in **civil and commercial matters** whatever the nature of the court or tribunal. [...]“
- Problems of (autonomous) interpretation and delimitation between „civil and commercial matter“ and matters of public law
- Exclusions in Art. 1 (2)

### § 4 Outline and scope of the Regulation Brussels I *bis*

- Sphere of application
- Article 4 (1): Defendant's domicile
- The international character of the dispute
- Do the two of the countries involved have to be Member States?
- Owusu vs. Jackson, C-281/02 (2005)

### ECJ, Owusu vs. Jackson, C-281/02 (2005)

On 10 October 1997, Mr Owusu ('the claimant'), a British national domiciled in the United Kingdom, suffered a very serious accident during a holiday in Jamaica. He walked into the sea, and when the water was up to his waist he dived in, struck his head against a submerged sand bank and sustained a fracture of his fifth cervical vertebra which rendered him tetraplegic (No. 10).

### ECJ, Owusu vs. Jackson, C-281/02 (2005)

Following that accident, Mr Owusu brought an action in the United Kingdom for breach of contract against Mr Jackson, who is also domiciled in that State. Mr Jackson had let to Mr Owusu a holiday villa in Mammee Bay (Jamaica). Mr Owusu claims that the contract, which provided that he would have access to a private beach, contained an implied term that the beach would be reasonably safe or free from hidden dangers (No. 11).

## ECJ, Owusu vs. Jackson, C-281/02 (2005)

Nothing in the wording of Article 2 of the Brussels Convention suggests that the application of the general rule of jurisdiction laid down by that article solely on the basis of the defendant's domicile in a Contracting State is subject to the condition that there should be a legal relationship involving a number of Contracting States (No. 24)

## ECJ, Owusu vs. Jackson, C-281/02 (2005)

However, the international nature of the legal relationship at issue need not necessarily derive, for the purposes of the application of Article 2 of the Brussels Convention, from the involvement, either because of the subject-matter of the proceedings or the respective domiciles of the parties, of a number of Contracting States. (No. 26)

§ 4 Outline and scope of the Regulation  
Brussels I *bis*

- Sphere of application
  - Article 4 (1) and the international character of the dispute
  - Choice of court agreements (Art. 25) and the Regulation's sphere of application

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. [...]

§ 4 Outline and scope of the Regulation  
Brussels I *bis*

- Sphere of application
  - Article 4 (1) and the international character of the dispute
  - Choice of court agreements (Art. 25) and the Regulation's sphere of application
  - Artt. 4-6 and the third state defendant

§ 4 Outline and scope of the Regulation  
Brussels I *bis*

**Art. 5 (1):** Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

#### § 4 Outline and scope of the Regulation Brussels I *bis*

**Art. 6 (1):** If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

#### § 5 Purpose and Grounds of Alternative (special) Jurisdiction

- Some examples of special jurisdiction in Articles 7 and 8 (apart from contracts and torts) and the overall purpose:
  - Civil claim for the recovery, based on ownership, of a cultural object (Article 7 (4))
  - Dispute arising out of the operation of a branch, agency or other establishment (Article 7 (5))

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- Civil claim for the recovery, based on ownership, of a cultural object (Article 7 (4))
- Dispute arising out of the operation of a branch, agency or other establishment (Article 7 (5))

#### Article 8 (1) Brussels I *bis* Regulation

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

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;  
[...]

#### § 6 Matters relating to contracts

- Structure and legislative history of Article 7 (1)

#### 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;  
[...]

### § 6 Matters relating to contracts

- Structure and legislative history of Article 7 (1)
- „in another Member State“
- „matters relating to a contract“

### 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;  
[...]

### § 6 Matters relating to contracts

- The need for autonomous interpretation
- One sided obligations, like the promise of a price (ECJ, Engler vs. Janus, C-27/02 (2005))

### § 6 Matters relating to contracts

- ECJ: Contract as „the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based“ (e.g. Engler vs. Janus, C-27/02 (2005), No. 51)
- Pre-contractual liability for breaking off negotiations: According to ECJ, Tacconi vs. Wagner, C-334/00 (2002) no contractual obligation

### 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;  
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:  
[...]

### Article 7 (1) Brussels I bis Regulation

- in the case of the **sale of goods**, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the **provision of services**, the place in a Member State where, under the contract, the services were provided or should have been provided;
- (c) if point (b) does not apply then point (a) applies;  
[...]

**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. B asks S to deliver this time directly to B's customer, the Company C in Budapest (Hungary). C complains about the quality of the devices and as a consequence, B does not pay the whole price to S. S plans to bring an action against B and wonders where he could do so..

