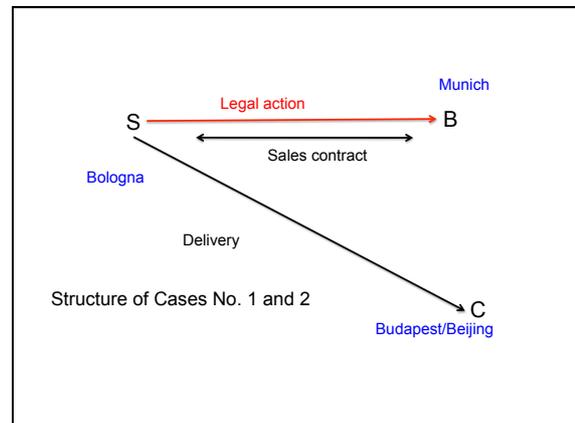




 JURISTISCHE
FAKULTÄT

Private International Law of Contractual and Non-Contractual Obligations

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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;

Article 7 (1) Brussels I *bis* Regulation

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- 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;**

- § 6 Matters relating to contracts
- I. Structure and legislative history of Article 7 (1)
 - II. The need for autonomous interpretation
 - III. "Sale of goods" and "provision of services" (Article 7 (1) (b))
 - IV. The function of Article 7 (1) (c)**
 1. Contracts beyond sale of goods and provision of services
 2. Place of delivery in Third States

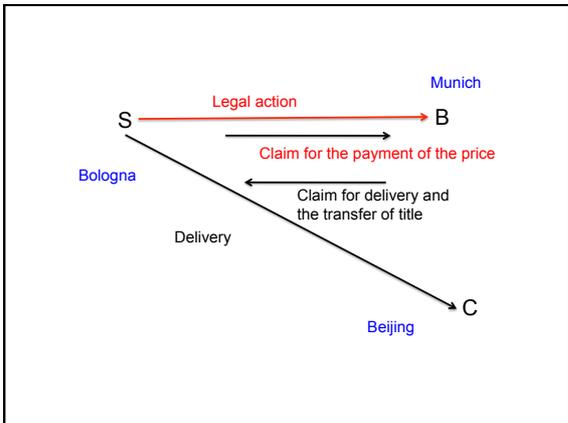
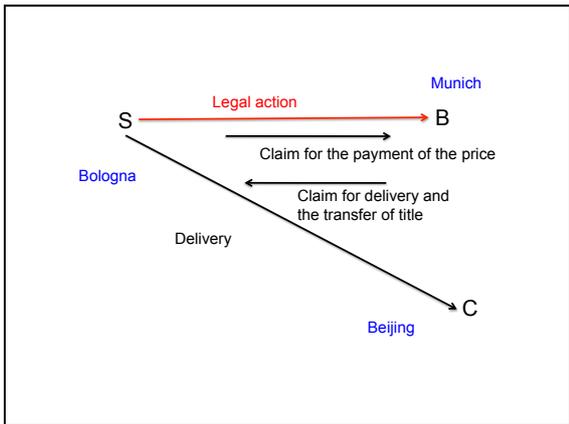
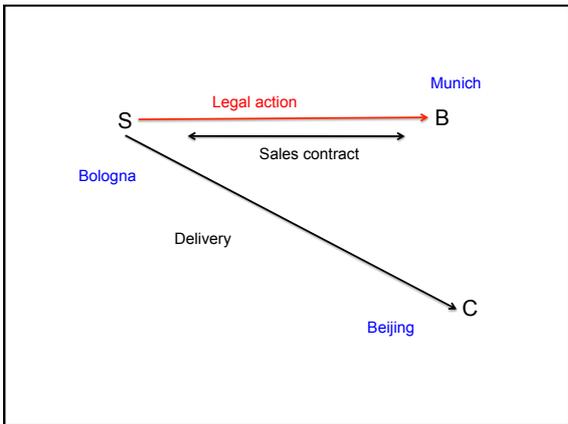
Article 7 (1) Brussels I bis Regulation

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(1) (a) in matters relating to a contract, in the courts for the **place of performance of the obligation in question**;

„obligation in question“

- Contrary to the cases addressed by point b), under point a) there is no common place of all performances under the contract.
- It is the place of the disputed obligation that is decisive
- **de Bloos v. Bouyer**, case 14/76 (1976), No. 13: „[...] the obligation to be taken into account is that which corresponds to the contractual right on which the plaintiff's action is based.“

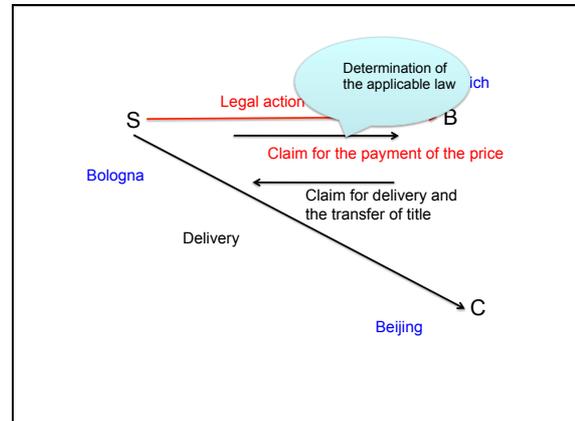


Allocation of the place of performance under Article 5 (1) point a)

- The place must be determined by the law governing the contract in question
- **Tessili v. Dunlop** (Case 12/76 (1976)) No 15: "In these circumstances the reference in the Convention to the place of performance of contractual obligations cannot be understood otherwise than by reference to the substantive law applicable under the rules of conflict of laws of the court before which the matter is brought."

Allocation of the place of performance under Article 5 (1) point a)

- This is true even if the contract is governed by uniform sales law (ECJ, case C-288/92, „*Custom Made Commercial Ltd. v. Stawa GmbH*“)
- No. 29: “It follows that Article 5(1) of the Convention must be interpreted as meaning that, in the case of a demand for payment made by a supplier to his customer under a contract of manufacture and supply, the place of performance of the obligation to pay the price is to be determined pursuant to the substantive law governing the obligation in dispute under the conflicts rules of the court seised, even where those rules refer to the application to the contract of provisions such as those of the Uniform Law on the International Sale of Goods [...]”



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,

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

Convention on the International Sale of Goods, (CISG)

Art. 3 (1) CISG:

Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

Case 2

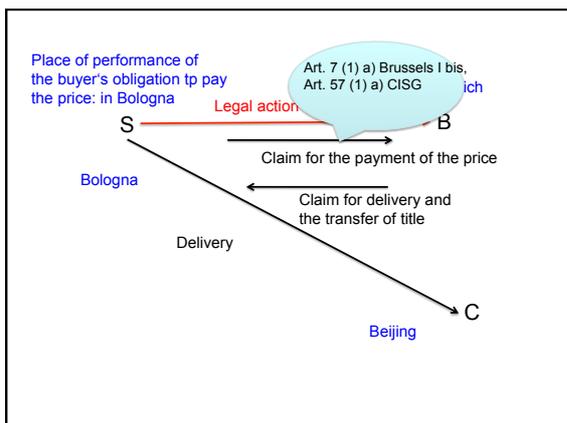
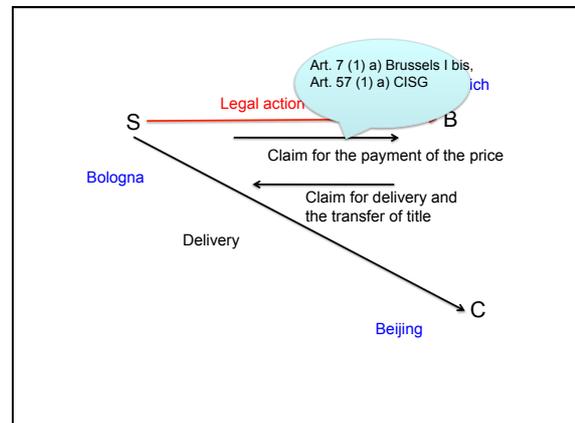
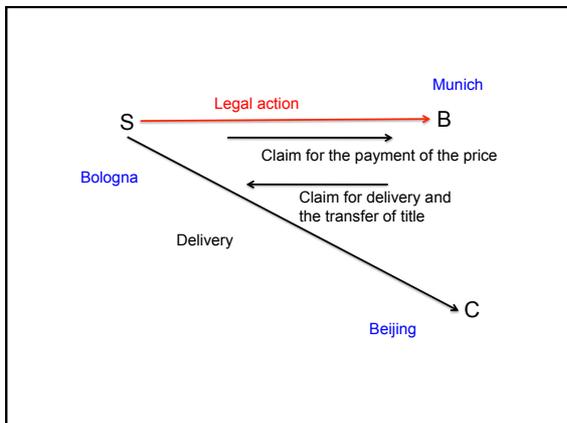
- CISG applies to the contract between S and B
- The applicable law has to be determined in order to decide whether the court has jurisdiction (exception to the usual order and sequence)

Convention on the International Sale of Goods, (CISG)

Art. 57 (1) CISG:

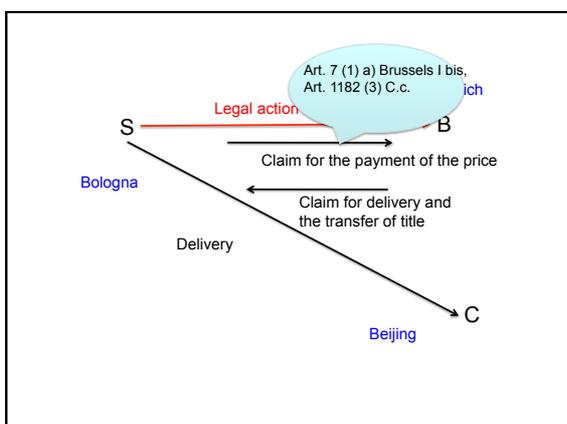
if the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

- at the seller's place of business; or
- [...]



Case 3

in case 2, the contract between the Italian seller (S) and the German buyer (B) contained a choice of law clause, stating that the contract is governed by **Italian internal law** (excluding the applicability of the CISG). Where would the place of performance have to be allocated in this case?



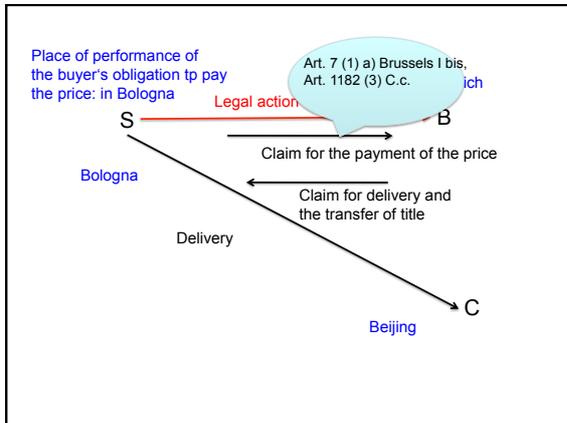
Codice civile italiano

Art. 1182 (3) C.c.:

(2) L'obbligazione di consegnare una cosa certa e determinata deve essere adempiuta nel luogo in cui si trovava la cosa quando l'obbligazione è sorta.

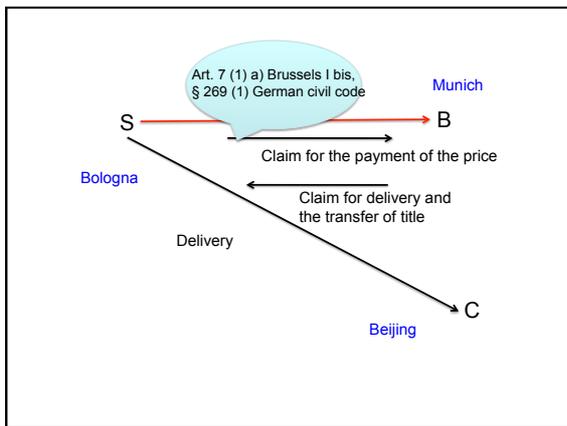
(3) L'obbligazione avente per oggetto una **somma di danaro** deve essere adempiuta al domicilio che il creditore ha al tempo della scadenza . [...]

According to the Italian civil code, the place of performance regarding the obligation to pay the price is at the creditor's (seller's) domicile.



Case 4

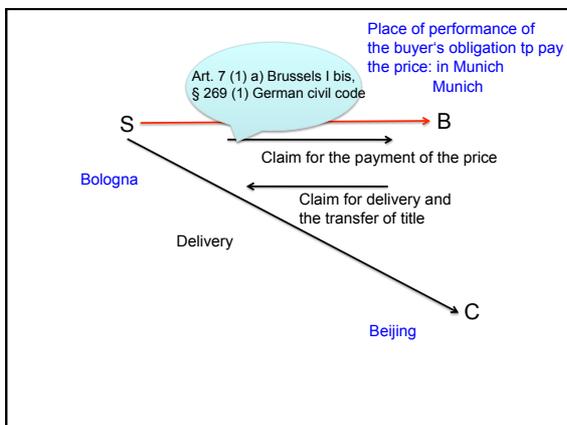
in case 2, the contract between the Italian seller (S) and the German buyer (B) contained a choice of law clause, stating that the contract is governed by **German internal law** (excluding the applicability of the CISG). Where would the place of performance have to be allocated in this case?



German civil code (BGB)

Section 269 (1) BGB:
 (1) Where no place of performance has been specified or is evident from the circumstances, in particular from the nature of the obligation, performance must be made in the place where the debtor had his residence at the time when the obligation arose.

According to the German civil code, the place of performance regarding the obligation to pay the price is at the debtor's (buyer's) domicile.



Findings in the Cases 1-4

- Case 1, Buyer's customer in Budapest: Place of performance in Budapest, according to Art. 7 (1) (b) first indent Brussels I bis
- Case 2, Buyer's customer in Beijing, contract governed by the CISG: Place of performance in Bologna, according to Art. 7 (1) (a) Brussels I bis

Findings in the Cases 1-4

- Case 3, Buyer's customer in Beijing, contract governed by Italian law: Place of performance in Bologna, according to Art. 7 (1) (a) Brussels I *bis*
- Case 4, Buyer's customer in Beijing, contract governed by German law: Place of performance in Munich, according to Art. 7 (1) (a) Brussels I *bis*

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“
 3. „or may occur“

Autonomous meaning of “Matters relating to torts”

- All liability which does not relate to a contract and consequently falls outside the material scope of Article 7 (1) (ECJ, Tacconi, C-334/00 (2002))
- In principle, there should not be gaps or overlap between Article 7 (1) and (2) (Bogdan, p. 48)

"place where the harmful event occurred“

- Within one State
- Within two States
- Where did the harmful event occur in case that the place of the harmful act and the place of the resulting damage are not identical?
- Bier v. Mines de Potasse (ECJ, case 21/76 (1976))

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.

“or may occur“

- Application to preventive actions as well.

