



Private International Law of Contractual and Non-Contractual Obligations

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Article 7 (2) Brussels I bis Regulation

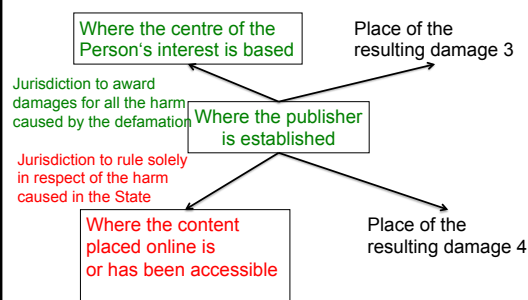
A person domiciled in a Member State may be sued in another Member State:

[...]

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

[...]

„eDate and Martinez“



Cases with more than one place of the resulting damage regarding the internet

- Alternatives to the approach of looking to the centre of interest of one person

Questions referred to the ECJ in eDate and Martinez (C-509/09 (2011))

24. What are the criteria which determine that connection (between the contested content of the website and the State of the court seised)? Does it depend on whether the **intention of the operator** is that the contested website is specifically (also) targeted at the internet users in the State of the court seised or is it sufficient for the information which may be accessed on the website to have an **objective connection** to the State of the court seised, in the sense that in the circumstances of the individual case, in particular on the basis of the content of the website to which the applicant objects, a **collision of conflicting interests** – the applicant's interest in respect for his right to protection of personality and the operator's interest in the design of his website and in news reporting – may actually have occurred or may occur in the State of the court seised?

§ 7 Matters relating to torts

- I. Structure of Article 7 (2)
- II. Cases with more than one place of the resulting damage
- III. Third State defendants and national rules on Jurisdiction to adjudicate

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)

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.

Example 1: Italy (Codification of PIL in 1995)

Art. 3. Ambito della giurisdizione

2. La giurisdizione sussiste inoltre in base ai criteri stabiliti dalle sezioni 2, 3 e 4 del titolo II della Convenzione concernente la competenza giurisdizionale e l'esecuzione delle decisioni [...], firmati a Bruxelles il 27 settembre 1968, [...] anche allorché il convenuto non sia domiciliato nel territorio di uno Stato contraente, quando si tratti di una delle materie comprese nel campo di applicazione della Convenzione. [...]

- Italian law extends the rules on jurisdiction of the Brussels regime to third state cases

Example 1: Italy (Codification of PIL in 1995)

- Italian law extends the rules on jurisdiction of the Brussels regime to third state cases.
- Italian judges would probably have to consider the Shevill and eDate doctrine when deciding a case where the defendant is domiciled in a third state.

Example 2: German Code of Civil Procedure

§ 32. Specific jurisdiction for tort claims

For claims arising from tort, the court in the jurisdiction of which the tortious act was committed shall have jurisdiction.

Example 2: German Code of Civil Procedure

In its "Google" decision of 14 May 2013 (VI ZR 269/12), the German Federal Supreme Court (FSC) ruled that German courts have jurisdiction to adjudicate under Section 32 of the German Code of Civil Procedure in an action brought against Google Inc., a company seated in California, USA, for the infringement of personality rights by means of the autocomplete feature offered by "Google.de". The FSC also held that German law applied.

Example 2: German Code of Civil Procedure

The FSC approach differs somewhat from the approach of the ECJ. Whereas the ECJ is looking for the place where the alleged victim has his **centre of interests**, the FSC requires that the forum state be the place where the diverging **interests of both parties collide**. This test is applied both to the question of jurisdiction to adjudicate and to the question of choice of law (under autonomous German conflict rules).

§ 7 Matters relating to torts

- I. Structure of Article 7 (2)
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- III. Third State defendants and national rules on Jurisdiction to adjudicate
- IV. **Consequences of "Shevill" and "eDate" regarding the determination of the applicable law**

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 [...].

Article 1 (2) Rome II Regulation

- (2) The following shall be excluded from the scope of this Regulation:
[...]
(g) Non contractual obligations arising out of violation of privacy and rights relating to personality, including defamation.

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, examples:
 - a) Italy
 - b) Germany

Example 1: Italy (Codification of PIL in 1995)

Legge 31 maggio 1995, n. 218,
Riforma del sistema italiano di diritto
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Example 1: Italy (Codification of PIL in 1995)

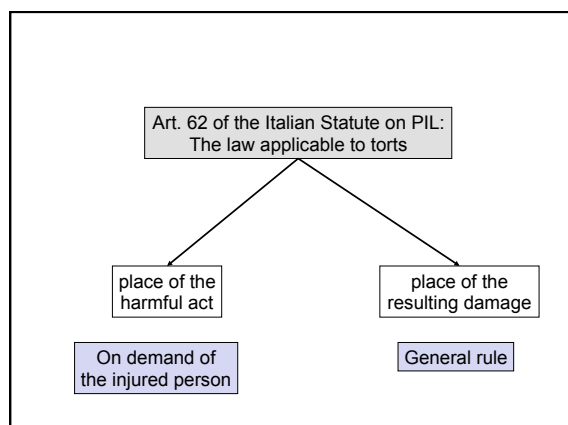
Art. 1. Oggetto della legge.

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.

Example 1: Italy (Codification of PIL in 1995)

Art. 62. Responsabilità per fatto illecito.

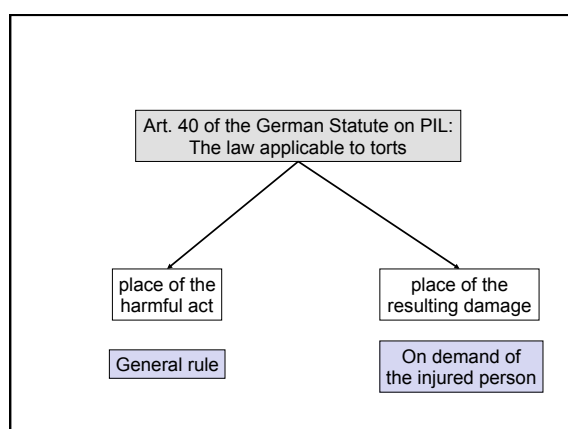
1. La responsabilità per fatto illecito è regolata dalla legge dello Stato in cui si è **verificato l'evento**. Tuttavia il danneggiato può chiedere l'applicazione della legge dello Stato in cui si è **verificato il fatto che ha causato il danno**.
2. Qualora il fatto illecito coinvolga soltanto cittadini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



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.



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.

§ 7 Matters relating to torts

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

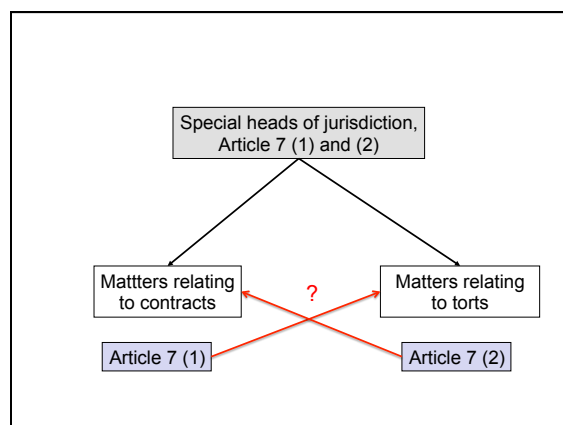
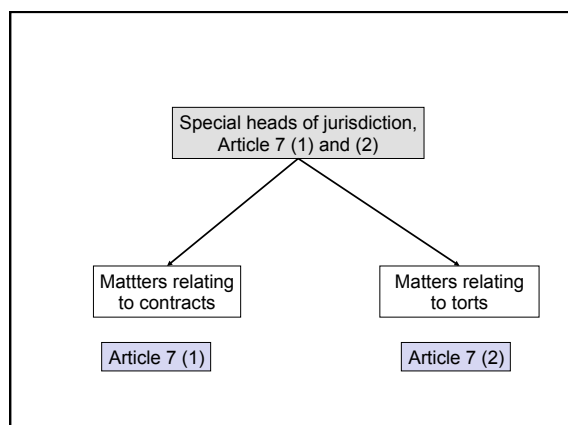
V. Relationship between the claims falling under Article 7(2) and other claims, based on contractual obligations

Relationship between actions based on breach of contract and actions based on tort

- Limitations of jurisdiction?

- May a court which has jurisdiction under Art. 7 (1) also decide on the issues of tortious liability arising from the same relationship?

- May a court which has jurisdiction under Art. 7 (2) also decide on the contractual matters of the case?

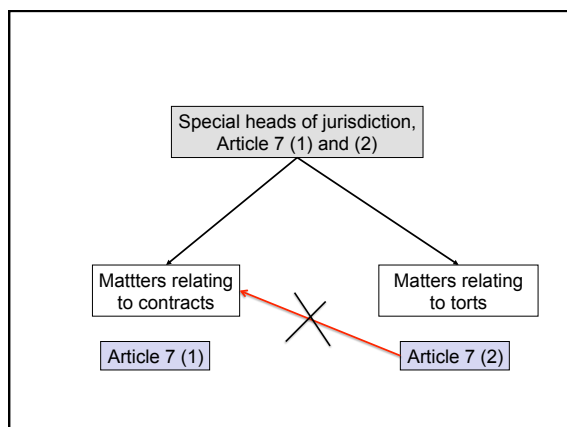


Kalfelis v. Schröder (ECJ, case 189/87 (1988))

19. [...] the 'special jurisdictions' enumerated in Articles 5 and 6 of the Convention constitute derogations from the principle that jurisdiction is vested in the courts of the State where the defendant is domiciled and as such must be interpreted restrictively. It must therefore be recognized that a court which has jurisdiction under Article 5 (3) over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based.

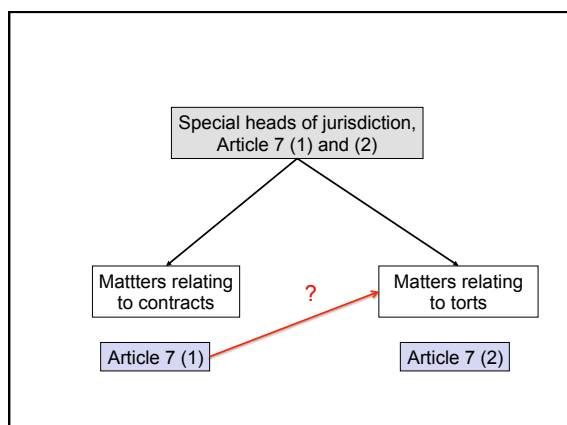
Kalfelis v. Schröder (ECJ, case 189/87 (1988))

20. Whilst it is true that disadvantages arise from different aspects of the same dispute being adjudicated upon by different courts, it must be pointed out, on the one hand, that a plaintiff is always entitled to bring his action in its entirety before the courts for the domicile of the defendant [...].



Relationship between actions based on breach of contract and actions based on tort

- Problems caused by the limitations of jurisdiction according to „Kalfelis“



Relationship between actions based on breach of contract and actions based on tort

- Limitations of jurisdiction
- Limitations of the plaintiff's choice to bring the action within Article 7 (2)

Brogsitter, ECJ, C-548/12 (2014)

6. Mr Brogsitter sells luxury watches. In 2005, he concluded a contract with a master watchmaker, Mr Fräßdorf, then resident in France, pursuant to which the latter undertook to develop movements for luxury watches, intended for mass marketing, on behalf of Mr Brogsitter. Mr Fräßdorf carried out his activity with Fabrication de Montres Normandes, company of which he was sole shareholder and manager.

Brogsitter, ECJ, C-548/12 (2014)

8. In addition to the work relating to those two movements, Mr Fräßdorf and Fabrication de Montres Normandes also developed, in parallel, other watch movements, cases and watch faces, which they exhibited in their own names at the world watch show in Basel (Switzerland) during April and May 2009. They marketed them in their own names and on their own behalf, whilst advertising the products online in French and German.

Brogsitter, ECJ, C-548/12 (2014)

9. Mr Brogsitter submits that, by those activities, the defendants breached the terms of their contract. According to Mr Brogsitter, Mr Fräßdorf and Fabrication de Montres Normandes had undertaken to work exclusively for him and, therefore, might neither develop nor make use of, in their own names and on their own behalf, watch movements, whether or not identical to those which were the subject of the contract.

Brogsitter, ECJ, C-548/12 (2014)

- Plaintiff claimed damages on the basis of the law against unfair competition

Special heads of jurisdiction,
Article 7 (1) and (2)Matters relating
to contracts

Article 7 (1)

Matters relating
to torts

Article 7 (2)

Brogsitter, ECJ, C-548/12 (2014)

29. [...] civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning 'matters relating to a contract' within the meaning of Article 5(1)(a) of Regulation No 44/2001, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.

Special heads of jurisdiction,
Article 7 (1) and (2)Matters relating
to contracts

Article 7 (1)

Matters relating
to torts~~Article 7 (2)~~

§ 8 Protective contracts

I. Structure of Articles 10-15, 17-19, 20-23