

EBERHARD KARLS
UNIVERSITÄT
TÜBINGEN



JURISTISCHE
FAKULTÄT

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

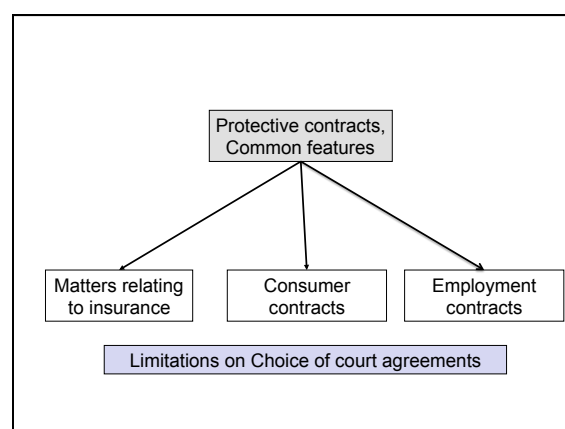
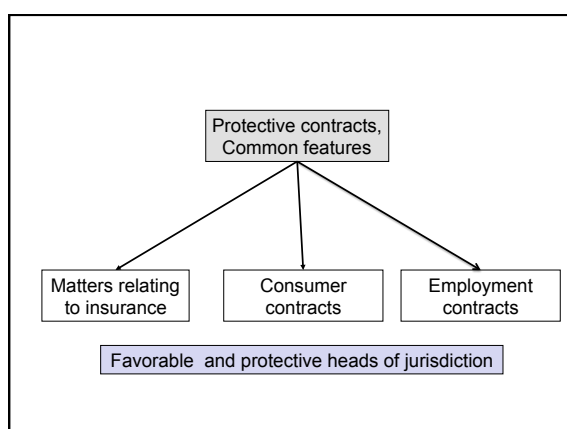
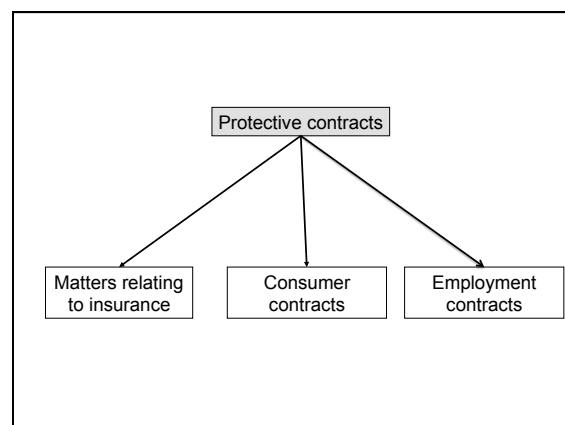
Prof. Martin Gebauer
 Ferrara 2015

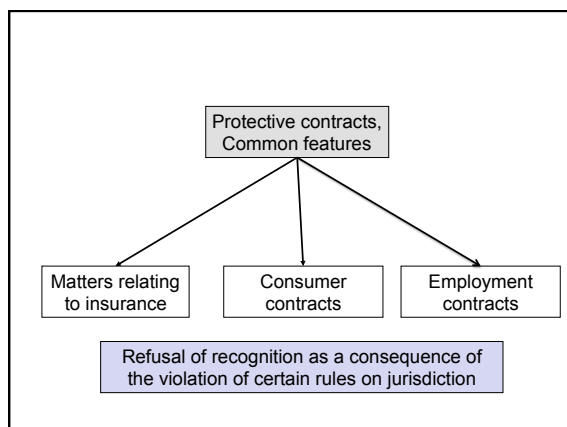
§ 8 Protective contracts

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

§ 8 Protective contracts

- Main structure of
 - Artt. 10-16 (Matters relating to insurance)
 - Artt. 17-19 (Consumer contracts)
 - Artt. 20-23 (Individual contracts of employment)





Article 45 Brussels I *bis* Regulation (Refusal of recognition)

1. On the application of any interested party, the recognition of a judgment shall be refused:
 - [...]
 - (e) If the judgment conflicts with:
 - Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant;
 - [...]
 - [...]

Favorable and protective heads of jurisdiction

- Sphere of application (Artt. 10, 17, 20)
 - Meaning of the phrase “without prejudice to Article 6 and point 5 of Article 7”.
 - Exceptions to the general rule that the defendant has to be domiciled in a Member State in disputes arising out of the operations of the branch, agency or establishment: Artt. 11 (2), 17 (2), 20 (2) Brussels I *bis* Regulation
 - Third state defendants and Article 18 Brussels I *bis* Regulation

Example (Article 20 (2))

Ms. Rossi enters into a contract of employment with United Airlines (Chicago, USA). She habitually carries out her work in Bologna. United Airlines does not have an establishment in the sense of Article 20 (2) Brussels I *bis* Regulation in Italy but in London. The contract of employment was concluded with the London establishment of United Airlines. When Ms. Rossi gets fired by United Airlines, she wonders where to bring an action.

Favorable and protective heads of jurisdiction

- Structure of Artt. 11, 14; 18; 21, 22 Brussels I *bis* Regulation having regard to the different roles of the parties
 - Weaker party as plaintiff: different grounds of jurisdiction
 - Weaker party as defendant: Limitation to the defendant's domicile
- Limitations on Choice of court agreements: Artt. 15, 19, 23 Brussels I *bis* Regulation

Cross border actions directly brought against the insurer

Example:

In a car accident in Stockholm (Sweden) the car of a person living in Italy (C – the creditor) gets damaged. The other party to the car accident (D – the debtor) lives in Sweden and is insured with a Swedish insurer (I). C wonders where to bring an action against the Swedish insurer.

Admissability of a direct action, Art. 13 (2) Brussels I *bis* Regulation

- Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

Art. 18 Rome II Regulation

Direct action against the insurer of the person liable

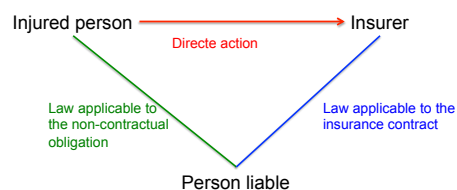
The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

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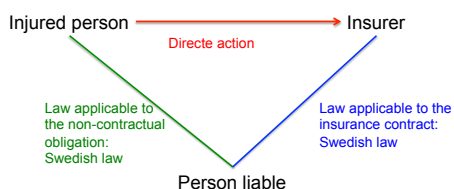
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Admissability of a direct action, Art. 13 (2) Brussels I *bis* Regulation



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Heads of jurisdiction regarding the claim of the injured person against the insurer of the person liable

- **Domicile of the insurer**
Artt. 13 (2), 11 (1) (a) Brussels I *bis* Regulation
- **Where the harmful event occurred**
Artt. 13 (2), 12 Brussels I *bis* Regulation
- **Domicile of the injured person**
Artt. 13 (2), 11 (1) (b) Brussels I *bis* Regulation
Following from ECJ, 13.12.2007, case C-463/06 (Odenbreit)

Odenbreit (ECJ, case C-463/06 (2007))

31. [...] the reference in Article 11(2) of Regulation No 44/2001 to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that a direct action is permitted and the insurer is domiciled in a Member State.

Consumer contracts

- Personal sphere of Artt. 17-19
- Contract and Consumer contract (Art. 17)
- Depending on the single transaction at stake

Consumer contracts

- Contracts falling within Art 17 (1)
- Art. 17 (1) (a) and (b)
- Art. 17 (1) (c) : „pursues commercial or professional activities in the Member State of the consumer's domicile“ or „by any means, directs such activities to the Member State ...“

ECJ, 7.12.2010, C-144/09, Alpenhof/Heller

25 Hotel Alpenhof, a company which operates the hotel bearing the same name located in Austria, is in dispute with a consumer, Mr Heller, who resides in Germany.

26 After finding out about the hotel from its website, Mr Heller reserved a number of rooms for a period of a week around 1 January 2008. His reservation and the confirmation thereof were effected by email, the hotel's website referring to an address for that purpose.

27 Mr Heller is stated to have found fault with the hotel's services and to have left without paying his bill despite Hotel Alpenhof's offer of a reduction. Hotel Alpenhof then brought an action before an Austrian court, the Bezirksgericht Sankt Johann im Pongau, for payment of a sum of roughly EUR 5 000.

28 Mr Heller raised the plea that the court before which the action had been brought lacked jurisdiction. [...]

ECJ, 7.12.2010, C-144/09, Alpenhof/Heller

92 In view of the foregoing considerations, the answer to be given to the referring court is that, in order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

ECJ, 7.12.2010, C-144/09, Alpenhof/Heller

93 The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

94 On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. ...

Consumer contracts

- Art. 17 (1) (c) : pursues commercial or professional activities in the Member State of the consumer's domicile" or „by any means, directs such activities to the Member State, and the contract falls within the scope of such activities.

Consumer contracts

- Does there have to be some connection between the directing of the activities and the conclusion of the contract?
 - Recital (25) of the Rome I Regulation