



Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer
Ferrara 2015

§ 9 Choice of Court Agreements (Art. 25 Brussels I *bis*)

- General remarks and requirements of a valid Choice of court agreement
- Consent and substantive validity
- Formal validity
- Legal consequences and effects of a valid agreement

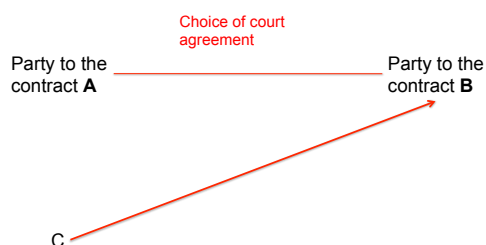
Legal consequences and effects of a valid agreement

- Prorogative and derogative effects
 - Presumption of the derogative effect: Art. 25 (1), second sentence
 - Limitations on the effects of Choice of court agreements: Artt. 15, 19, 23 Brussels I *bis* Regulation
- Third parties

Third parties

- General rule: Only the parties to an agreement will be bound by that agreement
- Exceptions to the rule:
 - Substantive contract concluded for the benefit of a third party

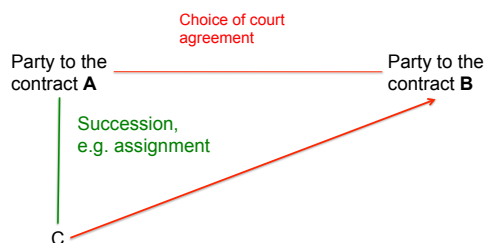
Contract concluded for the benefit of a third party



Third parties

- General rule: Only the parties to an agreement will be bound by that agreement
- Exceptions to the rule:
 - Substantive contract concluded for the benefit of a third party
 - The third party succeeded to the rights of one of the parties under the contract

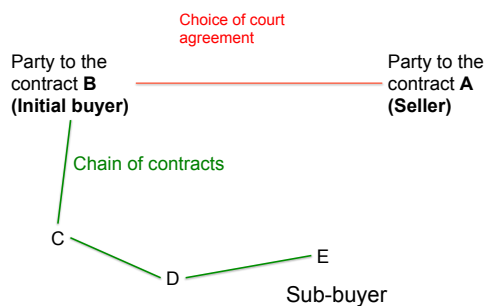
Third party succeeded to the rights



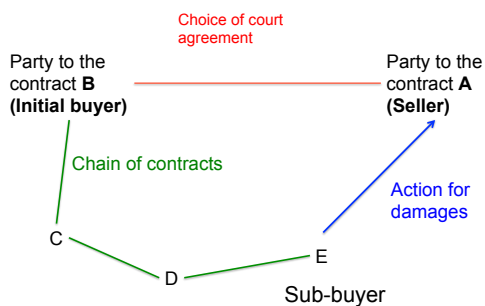
Third parties

- General rule: Only the parties to an agreement will be bound by that agreement
- Exceptions to the rule:
 - Substantive contract concluded for the benefit of a third party
 - The third party succeeded to the rights of one of the parties under the contract
 - Problem: Chain of contracts (sale of goods)

Chain of contracts (sale of goods)



Chain of contracts (sale of goods)



Refcom (ECJ, case C-543/10 (2013))

41. [...] Article 23 of the Regulation must be interpreted as meaning that a jurisdiction clause agreed in the contract concluded between the manufacturer of goods and the buyer thereof cannot be relied on against a sub-buyer who, in the course of a succession of contracts transferring ownership concluded between parties established in different Member States, purchased the goods and wishes to bring an action for damages against the manufacturer, unless it is established that that third party has actually consented to that clause under the conditions laid down in that article.

§ 10 Submission by appearance

Art. 26 (1): Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

§ 10 Submission by appearance

- Systematic relationship with choice of court agreements
- Additional ground of jurisdiction
- Conditions
 - Appearance
 - No contest
 - No other exclusive jurisdiction by virtue of Article 24
 - Weaker party as defendant?

§ 10 Submission by appearance

Art. 26 (2): In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

§ 11 Choice of Court Agreements according to the 2005 Hague Convention

- Short history of the convention
- Recent developments:
In October 2014, the EU Justice Ministers approved a decision to ratify the Convention
- Relationship between the European and the world wide level

Part III: Parallel Proceedings

§ 12 Risk of parallel proceedings and the need for coordination

§ 13 First in time principle and negative declaratory actions

§ 14 Particular issues

Art. 29 Brussels I *bis* Regulation

(1) Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

§ 12 Risk of parallel proceedings and the need for coordination

- Lis pendens pursuant Article 29 “covers a case where a party brings an action before a court in a Contracting State for the rescission or discharge of an international sales contract whilst an action by the other party to enforce the same contract is pending before a court in another Contracting State.” (Gubisch v. Palumbo, ECJ, case 144/86 (1987), Mn. 19)