

Private International Law of Contractual and Non-Contractual Obligations

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§ 14 Particular issues

- Negative declaratory action and special grounds of jurisdiction
 - May a negative declaratory action be brought before the courts of the state where the harmful act occurred?
- Folien Fischer, ECJ, C-133/11 (2012)

§ 14 Particular issues

Member State A (where the
harmful act occurred)
Negative declaratory action

Plaintiff → Defendant

Coercive action (second)

Defendant ← Plaintiff

Member State B

"place where the harmful event occurred"

place of the
harmful act

State A

place of the
resulting damage

State B

"place where the harmful event occurred"

place of the
harmful act

State A

place of the
resulting damage

State B

State C

Different places of the resulting damage

Place of the
resulting damage 1

Place of the
resulting damage 3

Place of the harmful act

Place of the
resulting damage 2

Place of the
resulting damage 4

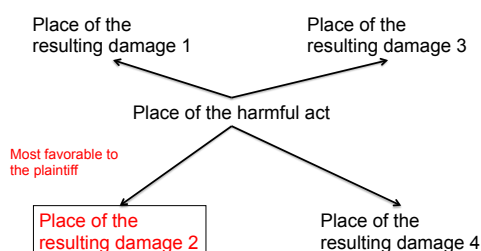
§ 14 Particular issues

Folien Fischer, ECJ, C-133/11 (2012), MN. 55: “the answer to the question referred is that point (3) of Article 5 of Regulation No 44/2001 must be interpreted as meaning that an action for a negative declaration seeking to establish the absence of liability in tort, delict, or quasi-delict falls within the scope of that provision.”

§ 14 Particular issues

- Consequences and open questions regarding lis pendens and the coordination of concurring proceedings

Different places of the resulting damage



Part IV: The Law Applicable to Cross-Border Contractual Obligations

- § 15 Material scope and general issues of the Rome I Regulation
- § 16 Freedom of choice
- § 17 Applicable law in the absence of choice
- § 18 Consumer contracts
- § 19 Formal validity
- § 20 Voluntary assignment and set-off
- § 21 Hague Principles on Choice of Law for International Contracts

§ 15 Material scope and general issues of the Rome I Regulation

- Material scope of Regulation Rome I, Art. 1
- Article 2, Universal Application: Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.
- Application in time, Article 28
- Definition of habitual residence in Article 19

§ 15 Material scope and general issues of the Rome I Regulation

- Exclusion of renvoi, Article 20
- Public policy of the forum, Article 21
- States with more than one legal system, Article 22
- Relationship with other conflict-of-law rules relating to contractual obligations, Artt. 23-25
- Consistency with Regulation Brussels I regarding the interpretation of the rules on consumer contracts, see Recital 24

§ 16 Freedom of choice

- Recital 11 Rome I Regulation: The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

Article 3 (1) Rome I Regulation

1. A contract shall be governed by the law chosen by the parties. The choice shall be made **expressly or clearly demonstrated** by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

[...]

§ 16 Freedom of choice

- Choice of the applicable law
 - Express choice
 - Conduct implying an intent to choose (clearly demonstrated)
 - Recital 12 and other indications
 - Extent of party autonomy

Extent of party autonomy by choosing the applicable law

Legal order of State A

Legal order of State B

Provisions which
cannot be
derogated fromProvisions which
can be
derogated fromProvisions which
cannot be
derogated fromProvisions which
can be
derogated from

Extent of party autonomy by choosing the applicable law

Legal order of State A

Legal order of State B

Provisions which
cannot be
derogated fromProvisions which
can be
derogated fromProvisions which
cannot be
derogated fromProvisions which
can be
derogated from

Choice of law by
the parties in favour
of the law of B

Extent of party autonomy by choosing the applicable law

Legal order of State A

Legal order of State B

Provisions which
cannot be
derogated fromProvisions which
can be
derogated fromProvisions which
cannot be
derogated fromProvisions which
can be
derogated from

At the same time:
Deselection in
disfavour of
the law of A

Choice of law by
the parties in favour
of the law of B

§ 16 Freedom of choice

- Choice of the applicable law
- Difference between Choice of law and incorporation by reference
- Non-State body of law

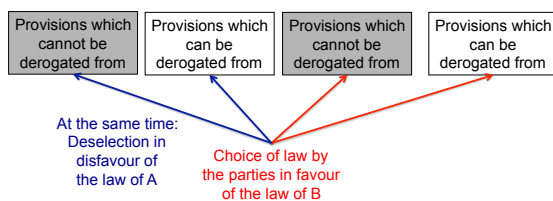
§ 16 Freedom of choice

- Recital 13 Rome I Regulation: This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.

Party autonomy and incorporation by reference

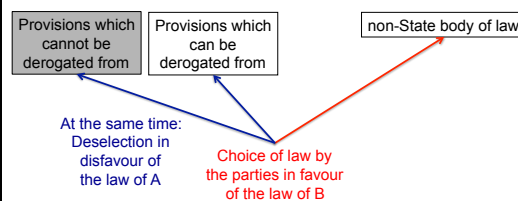
Legal order of State A

Legal order of State B

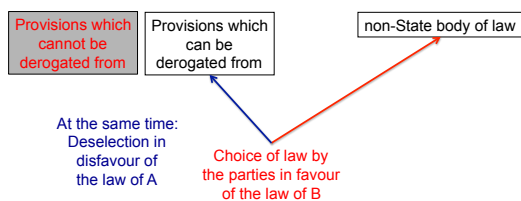


Party autonomy and incorporation by reference

Legal order of State A



Party autonomy and incorporation by reference

Legal order of State A,
applicable under Rome I

§ 16 Freedom of choice

- Recital 14 Rome I Regulation: Should the Community adopt, in an appropriate legal instrument, rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.

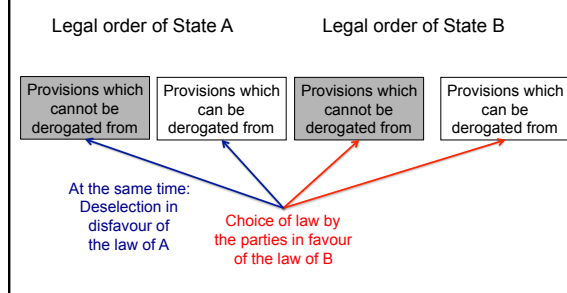
§ 16 Freedom of choice

- Choice of the applicable law
- Difference between Choice of law and incorporation by reference
- Limitations of the freedom of choice
 - Consumer contracts (see § 18)
 - Art. 3 (3) Rome I Regulation

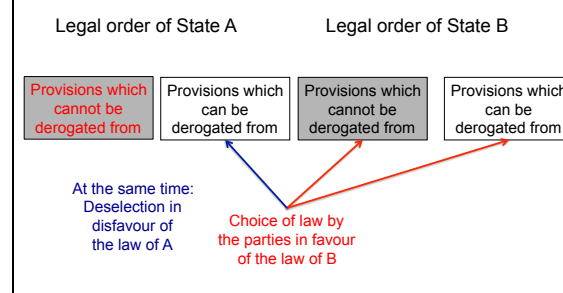
Article 3 (3) Rome I Regulation

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

Limitations according to Article 3 (3)



Limitations according to Article 3 (3)



Part IV: The Law Applicable to Cross-Border Contractual Obligations

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- § 17 Applicable law in the absence of choice

Article 4 (1) Rome I Regulation

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;
 - a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;
- [...]