



Private International Law of Contractual and Non-Contractual Obligations

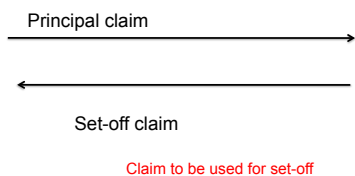
Prof. Martin Gebauer
Ferrara 2015

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

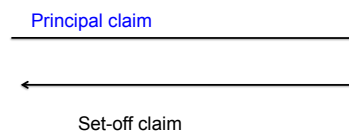
Set-off

Claim against which the right to set-off is asserted



The law governing set-off, Art. 17 Rome I

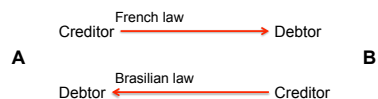
Claim against which the right to set-off is asserted



Set-off (Art. 17 Rome I)



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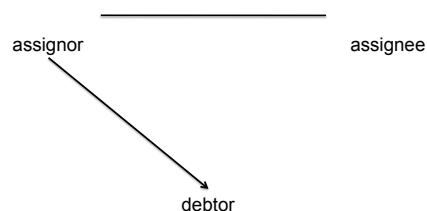
Principal claim: Claim against which the right to set-off is asserted

Set-off claim: Claim to be used for set-off

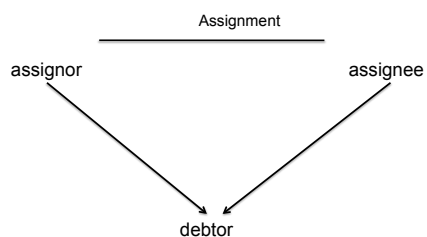
Different types of set-off concepts in substantive law of the Member States

- Set-off by unilateral declaration
- „Legal compensation“
- Procedural defence and effectuated by a judgment of the court

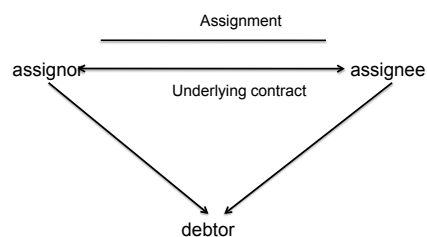
Voluntary assignment (Art. 14 Rome I)



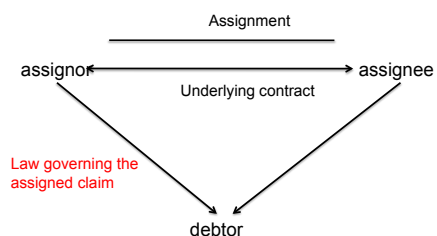
Voluntary assignment (Art. 14 Rome I)



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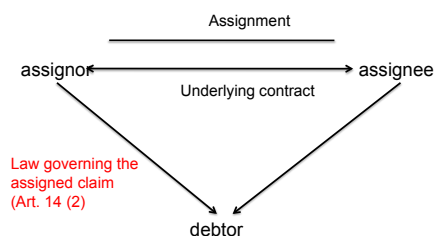
Voluntary assignment (Art. 14 Rome I)



Law governing the assigned claim (Article 14 (2))

- Assignability
- Relationship between the assignee and the debtor
- Conditions under which the the assignment or subrogation can be invoked against the debtor
- Whether the debtor's obligations have been discharged

Voluntary assignment (Art. 14 Rome I)



Article 14 (2) Rome I Regulation

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

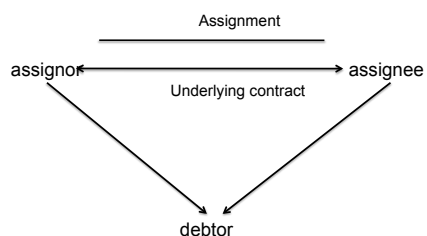
Voluntary assignment

- Law governing the assigned claim, Art. 14 (2)
- Relationship between assignor and assignee, Art. 14 (1)

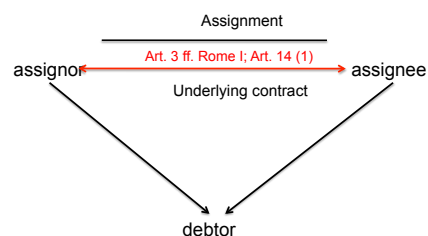
Article 14 (1) Rome I Regulation

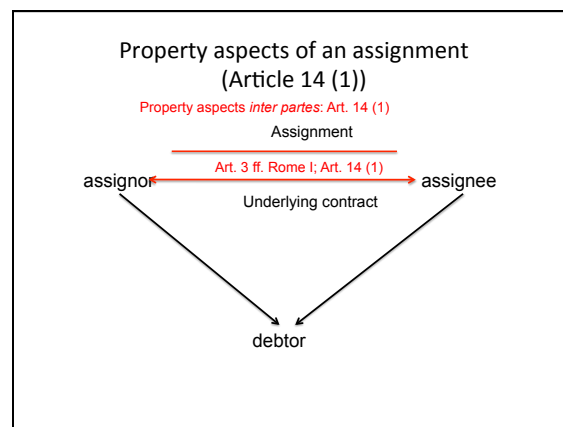
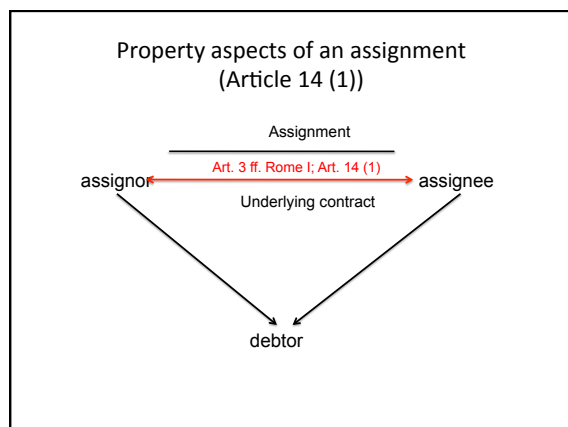
1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

Relationship between assignor and assignee (Article 14 (1))



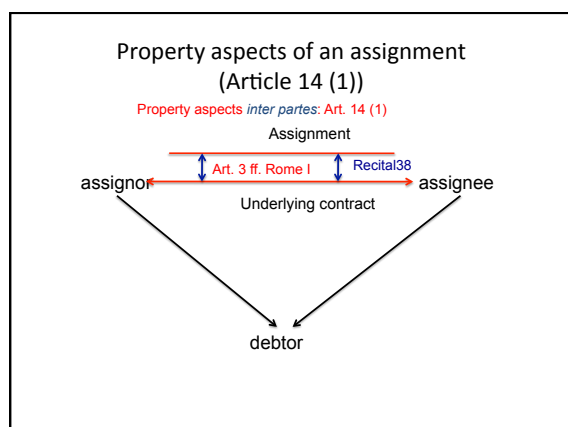
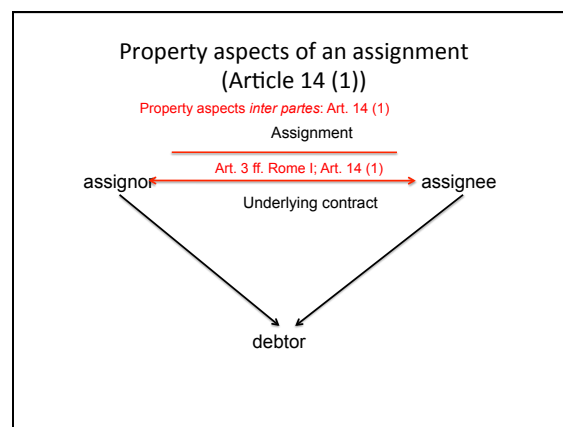
Relationship between assignor and assignee (Article 14 (1))



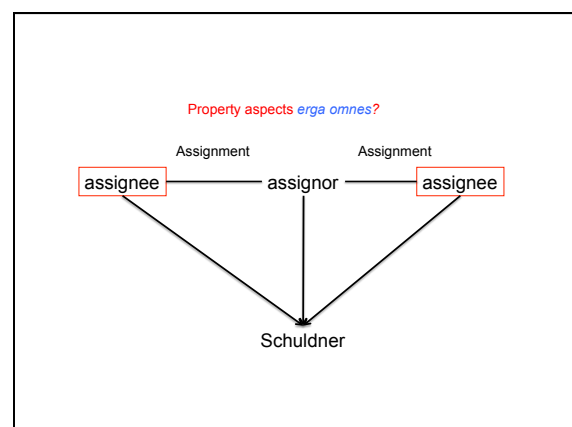
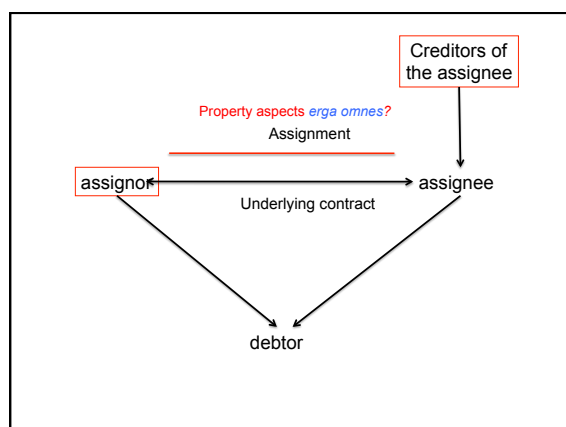
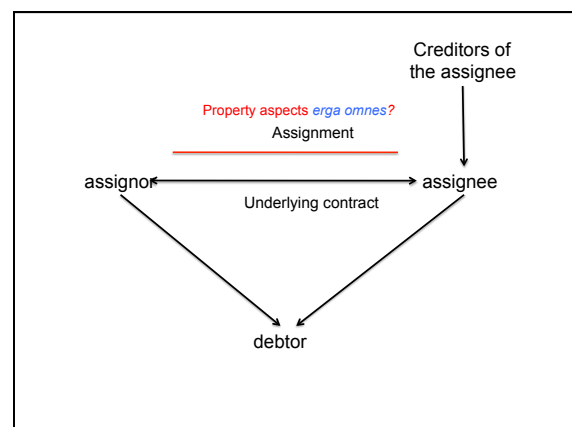
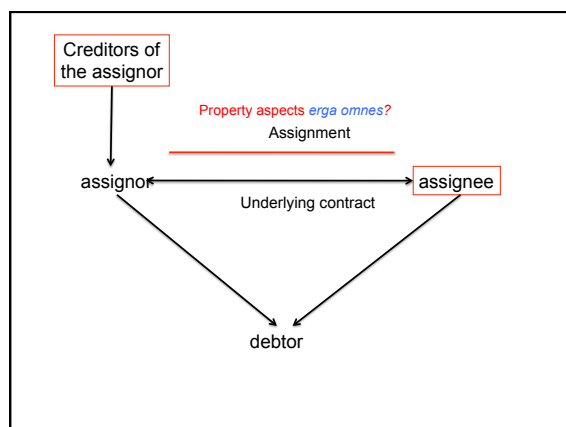
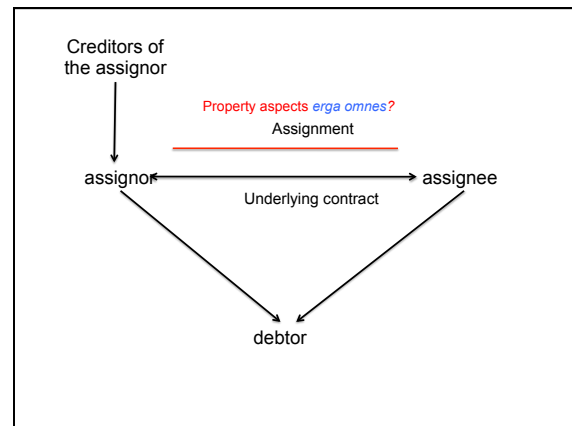
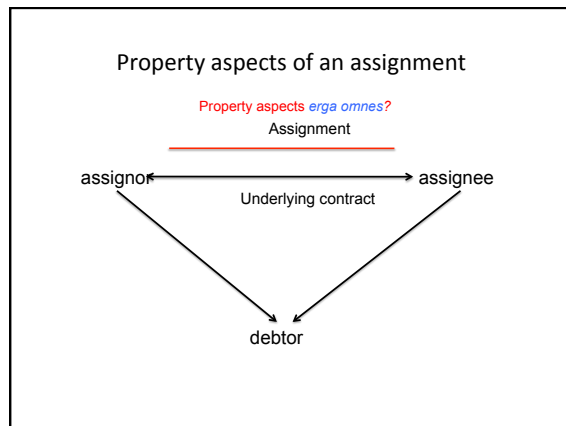


Recital 38 Rome I

In the context of voluntary assignment, the term 'relationship' should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. [...]



- Voluntary assignment
- Law governing the assigned claim, Art. 14 (2)
 - Relationship between assignor and assignee, Art. 14 (1)
 - Underlying contract
 - Property aspects *inter partes*
 - Property aspects *erga omnes* (against third parties)



Voluntary assignment

- Possible solutions regarding the property aspects *erga omnes*
 - Law governing the assigned claim
 - Law governing the contract between assignor and assignee
 - Habitual residence of the debtor
 - Habitual residence of the assignor

Article 13 (3) of the original Proposal for a Rome I Regulation, 15.12.2005 (COM(2005) 650 final)

3. The question whether the assignment or subrogation may be relied on against third parties shall be governed by the law of the country in which the assignor or the author of the subrogation has his habitual residence at the material time.

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- § 21 Hague Principles on Choice of Law for International Contracts

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- Hague Conference on Private International Law
- Special Commission on Choice of Law in International Contracts (2012)
- “Draft Hague Principles on the Choice of Law in International Contracts” (12 Articles)

The Preamble

1. This instrument sets forth general principles concerning choice of law in international commercial contracts. They affirm the principle of party autonomy with limited exceptions.
2. They may be used as a model for national, regional, supranational or international instruments.
3. They may be used to interpret, supplement and develop rules of private international law.
4. They may be applied by courts and by arbitral tribunals.