

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

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### Part V: The Law Applicable to Cross-Border Non-Contractual Obligations

- § 22 Material scope and general issues of the Rome II Regulation
- § 23 The general rule in Art. 4 Rome II regarding torts
- § 24 Culpa in contrahendo (Art. 12 Rome II)
- § 25 Freedom of choice (Art. 14 Rome II)
- § 26 Torts under the national rules of Private International Law

#### § 22 Material scope and general issues of the Rome II Regulation

- Material scope of Regulation Rome I, Art. 1
- Non contractual obligation, Article. 2
- Article 3, 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 31

#### § 22 Material scope and general issues of the Rome II Regulation

- Habitual residence, Article 23
- Exclusion of renvoi, Article 24
- Public policy of the forum, Article 26
- States with more than one legal system, Article 25
- Relationship with other conflict-of-law rules relating to non-contractual obligations, Artt. 27-28

#### § 23 The general rule in Art. 4 Rome II regarding torts

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** **irrespective of** the country in which the event giving rise to the damage occurred and **irrespective of** the country or countries in which the indirect consequences of that event occur.

#### § 23 The general rule in Art. 4 Rome II regarding torts

2. However, where the person claimed to be liable and the person sustaining damage both have their **habitual residence in the same country** at the time when the damage occurs, the law of that country shall apply.

§ 23 The general rule in Art. 4 Rome II regarding torts

3. Where it is clear from all the circumstances of the case that the tort/delict is **manifestly more closely connected** with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based **in particular** on a **pre-existing relationship** between the parties, such as a contract, that is closely connected with the tort/delict in question.

Structure of the general rule in Article 4

- (1) Place where the damage occurs as a basic connecting factor (lex loci damni)
- (2) Common habitual residence
- (3) Escape clause and example of an accessory reference

§ 23 The general rule in Art. 4 Rome II regarding torts

- General rule and conflict rules for specific torts, Artt. 5-9
- Rules of safety and conduct, Art. 17
- Burden of proof, Article 22
- Direct action against the insurer of the person liable

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

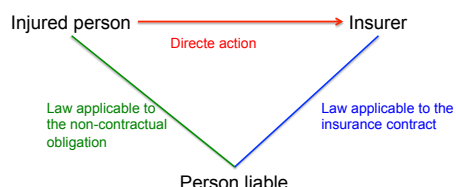
Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, **where such direct actions are permitted**.

Art. 18 Rome II Regulation

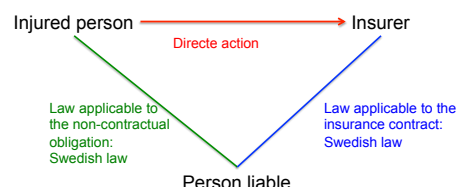
*Direct action against the insurer of the person liable*

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.

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



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- § 24 Culpa in contrahendo (Art. 12 Rome II)

### § 24 Culpa in contrahendo (Art. 12 Rome II)

- (1) The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.
- (2) Where the law applicable cannot be determined on the basis of paragraph 1, it shall be: [...]

### Recital 30

(30) Culpa in contrahendo for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should include the violation of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.

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