Material


Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 1968 (consolidated version), OJ 1998 C 27/1 (Brussels Convention)


Rome Convention on the law applicable to contractual obligations (consolidated version), OJ 1998 C 27/34 (Rome Convention)


Program

I. International contracts and introduction to international jurisdiction

Part 1: General

Relevant provisions: article 1, 2 and 5 Brussels I Regulation (Brussels Convention, for the 1st part differences between the two instruments are not important)

ECJ-case: Group Josi vs UGIC
ECJ 13-7-2000, Case C-412/98, Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC), European Court reports 2000, I-05925
Brussels I Regulation – Scope of application of Brussels I – relation between Brussels I and national law – Article 2 and 5 (1) Brussels I
Concentrate on the first preliminary question

ECJ-case: Handte vs TMCS
General rule of article 2 Brussels I – motivation for article 2 Brussels I – exceptions from article 2 and their justification
Part 2: Article 5 Brussels Regulation

Relevant Provisions: article 5 (1) Brussels Convention and article 5 (1) Brussels I

ECJ-case: Tessili vs Dunlop
ECJ 6-10-1976, Case 12/76, Industrie Tessili Italiana Como v Dunlop, European Court reports 1976, 1473
_Determination of the place of performance in accordance with article 5 (1) Brussels Convention_

ECJ-case: Leathertex vs Bodetex
ECJ 5-10-1999, Case C-420/97, Leathertex Divisione Sintetici SpA v Bodetex BVBA, European Court reports 1999, I-06747
_Determining the obligation in question under article 5 (1) Brussels Convention_

II. International contracts and introduction to choice of law

Relevant provisions: article 4 Rome Convention, article 4 Rome I

UK-case: Print Concept v GEW
Print Concept GmbH v GEW (EC) Ltd [2001] EWCA Civ 351 (Court of Appeal), summary in Schacherreiter, Leading Decisions, number 127
_Concept of characteristic performance – determination of the characteristic performance in agency contracts_

UK-case: Land Rover v Samcrete
Land Rover Exports Ltd v Samcrete Egypt Engineers and Contractors SAE, Court of Appeal, 21st December 2001, see the summary regarding article 4 (5) Rome Convention in Schacherreiter, Leading Decisions, number 152
_Question whether there is a closer relationship to another state than the state determined by article 4 (2) Rome Convention – Interpretation of article 4 (5) Rome Convention – interpretation in accordance with article 18 Rome Convention_

III. Party’s autonomy

Part 1: Choice of law clauses

Relevant provisions: article 3 Rome Convention; article 3 Rome I

UK-case: Land Rover v Samcrete
Land Rover Exports Ltd v Samcrete Egypt Engineers and Contractors SAE, Court of Appeal, 21st December 2001, see the summary regarding the choice of law clause in Schacherreiter, Leading Decisions, number 101
_Choice of law clause in a standard contract – clause crossed out by the other party – question whether parties have actually made a choice of law agreement – interpretation of article 3 (1) Rome Convention_

UK-case: Shamil Bank of Ahreain EC v Beximco Pharmaceuticals
Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd and others [2004] EWCA Civ 19, [2004] 4 All ER 1072 (Court of Appeal), see the summary regarding the choice of law clause in Schacherreiter, Leading Decisions, number 109
_Choice of law clause: “subject to the principles of Glorious Sharia’a this agreement shall fall under English law” – question whether it is possible to choose non state law_
Part 2: jurisdiction agreements

Relevant provisions: article 23 Brussels I (article 17 Brussels Convention)

ECJ-case: Salotti v Ruewa

ECJ 14-12-1976, Case 24/76, Estasis Salotti ua v Ruewa Polstereimaschinen GmbH, European Court reports 1976, 01831
Jurisdiction agreement in standard terms on the backside of a contract – question whether the agreement is valid – formal requirements in accordance with article 17 Brussels Convention (= article 23 Brussels I)

ECJ-case: MSG v Les Gravieres

ECJ 20-2-1997, Case C-106/95, Mainschifahrts-Genossenschaft eG (MSG) v Les Gravières Rhénanes SARL, European Court reports 1997 I-00911
Jurisdiction clause on bills and letters of confirmation, no contradiction by recipient – question whether jurisdiction clause is valid – formal requirements in accordance with article 17 Brussels Convention (= article 23 Brussels I)

IV. International Tort Law

ECJ-case: Bier v Mines de potasse

ECJ 30-11-1976, Case 21-76, Handelskwekerij G. J. Bier BV v Mines de potasse d’Alsace SA, European Court reports 1976 Page 01735
"Place where the harmful event occurred“ in accordance with article 5 (3) Brussels Convention – high salt content in a river is caused in one country and damages horticulture in another country – place of the event which causes the damage is different from the place where the damage occurs – article 5 (3) Brussels Convention covers both places

ECJ-case: Dumez France v Hessische Landesbank

ECJ 11-1-1990, Case C-220/88, Dumez France SA and Tracoba SARL v Hessische Landesbank et. al., European Court reports 1990, I-00049
Place where the harmful event occurred – place where the damage occurred – damage suffered by a third party

ECJ-case: Marinari v Lloyds Bank

Place where the harmful event occurred – place where the damage occurred – place where financial damage was suffered in consequence of initial damage

ECJ-case: Kronhofer v Maier et. al.

ECJ 10-6-2004, Case C-168/02, Rudolf Kronhofer v Marianne Maier et. al., European Court reports 2004, I-06009, see summary (in German) in Schacherreiter, Leading Decisions, number 265
Place where the harmful event occurred – Financial loss arising from capital investments in another Contracting State

ECJ-case: Shevill v Presse Alliance SA

ECJ 7-3-1995, Case C-68/93, Fiona Shevill, Oxora Trading Inc. et. al v Presse Alliance SA, European Court reports 1995, I-00415
Place where the harmful event occurred – cross-border defamation by the press – several countries of distribution – jurisdiction limited to the harm caused in the state of the court seised


V. International Company Law
Relevant provisions: Article 43 and 48 of the Treaty Establishing the European Community (consolidated version), OJ 2006 Nr C 321 E/37; see also paragraph 10 and 12 of the Austrian Act on Private International Law

ECJ-case: Daily Mail
ECJ 27-9-1987, Case 81/87, The Queen vs H. M. Treasury und Commissioners of Inland Revenue, Ex Parte Daily Mail and General Trust PLC, European Court reports 1988, 05483
Free movement of persons – Freedom of establishment – Company incorporated under the legislation of a Member State and having its registered office there – Right to transfer the central management and control of a company to another Member State

ECJ-case: Centros
ECJ 9-3-1999, Case C-212/97, Centros Ltd vs Erhvervs- og Selskabsstyrelsen, European Court reports 1999, I-01459 (summary in German in Schacherreiter, Leading Decisions, number 339)
Freedom of establishment – Company formed in accordance with the law of a Member State in which it has its registered office but in which it conducts no business – Establishment of a branch in another Member State – Registration refused

ECJ-case: Überseering
ECJ 5-11-2002, Case C-208/00, Überseering BV vs Nordic Construction Company Baumangament GmbH (NCC), European Court reports 2002, I-09919 (summary in German in Schacherreiter, Leading Decisions, number 340)
Company exercising its freedom of establishment in another Member State – Company deemed to have transferred its actual centre of administration to the host Member State under the law of that State – Non-recognition by the host Member State of the company’s legal capacity and its capacity to be a party to legal proceedings – Restriction on freedom of establishment

ECJ-case: Inspire Art
ECJ 30-9-2003, Case C-167/01, Kamer van Koophandel en Fabrieken vor Amsterdam vs Inspire Art Ltd, European Court reports 2003, I-10155 (summary in German in Schacherreiter, Leading Decisions, number 341)
Articles 43 EC, 46 EC and 48 EC – Company formed in one Member State and carrying on its activities in another Member State – Application of the company law of the Member State of establishment intended to protect the interests of others

ECJ-case: Cartesio Oktató
Opinion of the Advocate General of 22-5-2008, Case C-210/06, Cartesio Oktató és Szolgáltató bat, and judgment of ECJ of 16-12-2008 (fourth preliminary question)
Hungarian Law does not allow for a Hungarian Company to move its seat to another country – Question whether this constitutes an infringement of Articles 43, 48 EC

VI. The problem of characterization

Part 1: National Rules

UK-case: Re Maldonado
Succession of a state if somebody dies without heirs – characterization of the state’s claim – ius regale or claim of a true heir – lex causae characterization
UK-case: Re Barnett’s Trust

Re Barnett’s Trusts [1900-1903] All ER Rep 515
Succession of a state if somebody dies without heirs – characterization of the state’s claim – ius regale or claim of a true heir – lex causae characterization

UK-case: Adams v. National Bank

Characterization of a foreign rule looking at its substance and not merely at its form

Part 2: European Rules

ECJ-case: Tacconi v Wagner

ECJ 17-9-2002, Case C-334/00, Fonderie Officine Meccaniche Tacconi SpA v Heinrich Wagner Sinto Maschinenfabrik GmbH, European Court reports 2002, I-07357
Characterization of claims based on culpa in contrahendo – “matters relating to tort, delict or quasi-delict” – autonomous interpretation
See also article 12 Rome II and article 1 (2) lit I Rome I

(remember also: the ECJ-case Handte vs TMCS; ECJ 17-6-1992, Case C-26/91, Jakob Handt & Co GmbH v Traitements Mécano-chimiques des Surfaces SA, European Court reports 1992, I-03967; Interpretation of “matters relating to a contract” in accordance with article 5 (1) Brussels Convention – autonomous interpretation)

VII. Ordre Public

Relevant provisions: article

German case: Amtsgericht Frankfurt/Main 35 F 4153/87
Amtsgericht Frankfurt/Main 9-8-1988, 35 F 4153/87, see the summary regarding the choice of law clause in Schacherreiter, Leading Decisions, number 50
Talaq divorce as an infringement of public order

German case: OLG München 2 UF 1696/86
OLG München 19-9-1988, 2 UF 1696/86, IPRax 1989, 238, see the summary regarding the choice of law clause in Schacherreiter, Leading Decisions, number 53
Talaq divorce does not constitute an infringement of public order

VIII. Overriding mandatory rules

Relevant provisions: article 7 Rome Convention, article 9 Rome I

ECJ-case: Ingmar v Eaton Leonard

ECJ 9-11-2000, Case C-381/98, Ingmar GB Ltd v Eaton Leonard Technologies Inc, European Court reports 2000, I-09305
International agency contract between English agent and Californian enterprise – choice of law agreement: Californian law – question whether mandatory European rules protecting agents shall apply in spite of the choice of law agreement

German case: OLG München 7 U 1781/06
OLG München 17-5-2006, 7 U 1781/06, IPRax 2007, 322
International agency contract between German agent and Californian enterprise – jurisdiction agreement and choice of law clause: Californian courts and law – question whether by jurisdiction and choice of law clause European rules protecting the agent may be derogated