Private International Law Case Studies, Examples, Q&A

Case Study No. 1 – interpretation of EU Law concepts, provisions, acts

Court of Justice on the first occasion of the interpretation of the Brussels Convention, it frequently uses words and legal concepts drawn from civil, commercial and procedural law and capable of a different meaning from one Member state to another. The question therefore arises whether these words and concepts must be regarded as having their own independent meaning and as being thus common to all the Member states or as referring to substantive rules of the law applicable in each case under the rules of conflict of laws of the court before which the matter is first brought. Neither of these two options rules out the other since the appropriate choice can only be made in respect of each of the provisions of the Convention to ensure that it is fully effective having regard to the objectives of article 220 of the TEEC. In any event it should be stressed that the interpretation of the said words and concepts for the purpose of the Convention does not prejudge the question of the substantive rule applicable to the particular case.[1]

According to many evaluations, the Protocol was a singular event in the continuing history of legal, social, and political integration in Europe. The European Court of Justice was the first international court to be afforded jurisdiction over a private international law convention. Therefore, the Court has been given an opportunity of solving, in a unitary European perspective, the problems of interpretation arising from the 1968 Convention. The Court of Justice has certainly availed itself of this opportunity and has, on several occasions, interpreted disputed Convention terms by adopting a Community definition instead of a definition favoured by a particular Member State.[2]

Questions:

1. Please state the circumstances and dates when the Court of Justice acquired jurisdiction to interpret Brussels Convention from 1968.

2. What are the consequences of the fact that the individual terms used in EU legal acts are interpreted bindingly only by the Court of Justice?

[1] Judgement of the Court of Justice of 6 October 1976, 12/76, Industrie Tessili Italiana Como v. Dunlop AG, para 10 and 11.

[2] Reuland, R.: The Recognition of Judgments in the European Community: The Twenty-Fifth Anniversary of the Brussels Convention. Michigan Journal of International Law. Volume 14, Issue 4, 1993, p. 566.

Case Study No. 2 – Recognition and enforcement of foreign judgements

A Slovak transport company owning several trucks with which it carries out transport within the entire EU will receive a notification from the Slovak executor about the initiation of enforcement, the reason for which is the non-payment of tolls for crossing the highway in Austria (i.e. Austrian enforceable decision).

Questions:

1. Does the recognition and enforcement of the toll payment decision issued by the Austrian state-owned company ASFiNAG fall within the scope Brussel I rec regulation? ASFiNAG decision has been confirmed by the court in Austria. The situation with the scope will eventually change?

Prove your arguments with relevant Court of Justice jurisprudence.

2. If the answer is yes, what options for defence does the Slovak transport company have and in which proceedings?

Case Study No. 3 – Recognition and enforcement of foreign judgements

A group of primary school pupils from Bratislava (Slovakia) is on a trip to the Zoo in Vienna (Austria) before the holidays. The trip is organized by the school, which assigns the class teacher to supervise the children during the trip. After arriving at the ZOO, the teacher gives the students a break in the ZOO for 5 hours. During that time, however, one student leaves the zoo, has a collision with a car near the center of Vienna and dies of serious injuries in a nearby hospital. The teacher is facing criminal prosecution in Austria, which will result in a suspended prison sentence. In the criminal judgment, the Austrian court will also determine the obligation to pay damages in the amount of EUR 150,000 to the parents of the deceased pupil. The teacher resists the payment of this compensation, it seems to her to be disproportionately high by Slovak law (which is also true). The parents of the deceased pupil therefore intend to enforce the Austrian judgment in Slovakia, where the teacher is the owner of a two-room apartment in Bratislava.

Questions:

1) Does the recognition and enforcement of the criminal judgment in the part of compensation for damage determined by the judgment of the Austrian court fall within the scope of the norms of private international law?

2) What procedure do you advise to parents who want to obtain payment of damages?

3) What procedure would you advise a teacher who did not participate in the court proceedings in Austria and the amount of the compensation potentially liquidates her from existence.

4) The Slovak court in accordance with § 53 par. 1 of the Execution Order examines the parents' proposal for execution and also examines the criminal judgment of the Austrian court. He finds that the Austrian court did not take into account several expert opinions and did not take several suggested pieces of evidence. The Austrian judgment seems unreviewable to Slovak judge, so the judge rejects the claim for execution. Consider this procedure according to the relevant Brussel I rec regulation provisions.

Case Study No. 4 – Recognition and enforcement of foreign judgements

Slovakian Samuel worked for 10 years in Peru. His work stay was cut short because the German company he worked for in Peru had not paid him his salary for the past 6 months. Samuel sued the employer in a court in Lima and has a void but enforceable judgment from a Peruvian court. In Slovakia, Samuel achieved recognition of the Peruvian decision. He comes to Germany with this Slovak decision and demands its enforcement.

Questions:

1. Could the Slovak court recognize the Peruvian decision according to the Brussels I rec regulation?

2. Can a German court order enforcement based on a Slovak judgement under the Brussels I rec regulation?

Case Study No. 5 – Recognition and enforcement of foreign judgements

Helen is woken up in the morning by a postman in the Bratislava. In his hand, postman holds an envelope with an orange Polish delivery note to her own hands, which does not portend anything pleasant. Helen lived in Poland last year and seems to have left behind several leases and purchase contracts unpaid. In fact, two valid Polish judgments have already been delivered to her together with the notification of the Slovak executor about the initiation of the execution.

Questions:

1. What is the correct procedure for enforcing a Polish judgment on the territory of the Slovak Republic? Which regulations are applied by which authorities?

2. Since Helen does not speak the Polish language, does she have special defense options against the enforcement of the Polish judgment? Lets provide argumentation with specific provisions of specific legal act.

Case Study No. 6 – Recognition and enforcement of foreign judgements

Franz Baumgartner (German citizen) is not paying the mortgage loan he has taken out in the Czech Fio Bank. As a result of the negotiations on the situation, he will sign the "Deed of Acknowledgment of Debt and Certificate of Amount Due" at the bank, which contains an obligation to pay the amount of EUR 200,000 to the bank. The document will be certified by a bank employee and an authorized attorney. Czech Fio Bank has found Franz's property in Austria and submit a claim in the enforcement proceedings in Austria based on a document, which is to be recognized according to Art. 58 of the Brussels I rec regulation.

Questions:

1. What defence options does Franz Baumgartner have within the given execution?
2. Can he used also argumentation provide in Case C-260/97 Unibank?

Case Study No. 7 – Application of private international law governing judicial proceedings

The flower shop, based in Kitsee, Austria, has been providing goods and various services to the Hotel in Bratislava (Slovakia) for a long time. In 2021, as a result of the crisis, the hotel stopped paying for services provided and goods delivered. Flower shop in Kitsee has claim in the amount approximately EUR 4,000 (without interests).

Questions:

1. What options does the flower shop have for recovering the amount owed from the point of view of process institutes and types of lawsuits which are provided in EU actcs?

2. Compare the individual options, which are the most effective?

Case Study No. 8 – International Jurisdiction and Applicable Law

Peter domiciled in Slovakia has excellent friend Igor domiciled in Czechia. Both decided to strengthen their relationship on vacation in Croatia during summer 2022. They go separately with their families in their own cars. In Austria, they decide to meet at a parking lot on the highway outside the city of Graz, unfortunately their meeting ends with a minor collision between their two cars. After returning to Slovakia, Peter sues Igor, and then Igor decides to sue Peter. These are different courts in different Member States.

Questions:

1. Courts of which EU Member States have jurisdiction and according to which EU legal acts?

2. What applicable law will govern the respective claims and based on which regulation will the courts determine it?

3. Are several courts of different EU Member States entitled to act at the same time?

Case Study No. 9 – International Jurisdiction and Applicable Law

Peter domiciled in Portugal and Manuel domiciled in Spain decided to strengthen relations on holiday in Switzerland (Davos). They travel from Portugal and Spain separately by their own cars. In France, they suddenly decide to meet at the parking lot on the motorway outside the city Besançon, but unfortunately their meeting will end in a minor collision between their two cars. They have dispute who is guilty of collision. After returning to Portugal, Peter sues Manuel and then Manuel decides to sue Peter. These are different courts in different Member States.

Questions:

1. Which courts have jurisdiction and according to which law (act, treaty, regulation…)?
2. What shall be the applicable (substantive) law for their claims?
3. How is it possible to make a choice of law or why is it not possible?

Case Study No. 10 – International Jurisdiction and Applicable Law

Esteban domiciled in Portugal and Carlos domiciled in Spain decided to strengthen relations on holiday in Switzerland (Davos). They travel from Portugal and Spain separately by their own cars. In France, they suddenly decide to meet at the parking lot on the motorway outside the city Besançon, but unfortunately their meeting will end in a minor collision between their two cars. They have dispute who is guilty for collision. After returning to Portugal, Esteban sues Carlos and then Carlos decides to sue Esteban. These are different courts in different Member States.

Questions:

1. Which courts have jurisdiction and according to which law (act, treaty, regulation…)?

2. How is possible to enforce Spanish judgement in Portugal, what is possible procedural law?

3. What are possible reasons for refusal of recognition – Spanish judgement?

Case Study No. 11 – International Jurisdiction and Applicable Law

Meghan is a famous singer, a US citizen, she lives in London, where she has business and family. She will conclude a contract with the French company Fox, the subject of which is a concert line in France. The English newspaper The Sun, available worldwide on the Internet as well, subsequently publishes articles about Meghan, which show that she sexually abuses young girl. Fox will unilaterally terminate the contract. Meghan decides to fight back, considering a claim for damages and an apology (personality protection) against the newspaper's publisher, and against Fox for a declaration that the contract is valid (a declaratory action).

Questions:

1. What is your recommendation for Meghan where she can claim the publisher of The Sun.

2. What are the options with regard claim against Fox.

3. Meghan obtains a US court judgment for damages against Fox. Advise Fox on how to obtain a stay of execution of the US judgment in France.

4. Can Meghan use the European Order for Payment procedure to claim damages?

Case Study No. 12 – International Jurisdiction and Applicable Law

Miro is a citizen of the Slovak Republic living in Bratislava, who sold a car service (as a set of movable and immovable properties) that Miro has in Wien to his old acquaintance Norbert from Kosice. Miro claims that the service has a lot of Austrian clients, is free of debts and produces a decent profit. He demands a purchase price of €100,000 in two installments, the first immediately upon signing the purchase contract and the second in two weeks. Both will sign the contract at a meeting in Bratislava. After a week, Norbert informs Miro that no one comes to the service center, he has doubts about any creditworthy clientele and refuses to pay Miro the second part of the purchase price. Norbert also demands from Miro to pay the hidden (last) installment for the service equipment, which the Slovak leasing company demands from him.

Questions:

1. If a lawsuit is filed by any party to the contract, is it a cross-border dispute? Justify.

2. If it is a cross-border dispute, according to which legal regulation is it necessary to assess the jurisdiction of the courts?

3. The courts of which countries have the jurisdiction to decide on mutual claims between Miro and Norbert? For the court of each state, state the criterion of jurisdiction according to the relevant legal regulation.

Case Study No. 13 – International Jurisdiction and Applicable Law

The Qatari citizen John married Zlatica, a Slovak woman, as his third wife in Dubai, and they also live in Dubai. Zlatica wants to divorce after a year.

Questions:

1. Is it possible to divorce this marriage in a court in the Slovak Republic, with questionable application of the reservation of public order?

2. By what applicable law would the divorce before the court of the Slovak Republic be administered and based on what source of law?

3. According to SAE law, Zlatica does not have the capacity to file for divorce. Does he then have it on the territory of the Slovak Republic? Justify.

Case Study No. 14 – Applicable Law (e-commerce)

A Slovak consumer obtains goods via the Internet from the American company Amazon, which has its headquarters in the USA and a branch (warehouse) in Germany. Business is conducted through an internet portal with a registered domain in the USA. This portal is only in the English language and is aimed only at consumers in the US and Canada.

Questions:

1. Can a Slovak consumer demand the application of Slovakian law if he files a lawsuit in a German court?
2. What imperative standards will the German court use and based on what regulation?
3. Is the choice of law made between the contracting parties in favor of Quebec law valid?

Case Study No. 15 – Recognition of foreign judgments and public documents (family law)

Slovak citizens, both male, adopt a minor boy based on the decision of the US court of the state of Arizona. The Arizona authorities will also issue a birth certificate with the registration of both men as father 1 and father 2. They plan to live as a family in the Slovak Republic.

Questions:

1. Based on which regulation is it possible to recognize a birth certificate from the USA on the territory of the Slovak Republic?

2. Is it possible to recognize/not recognize the court decision of the state of Arizona in the Slovak Republic, according to which legal regulation will you proceed in the Slovak Republic?

3. How will you specifically justify the possible application of the public order reservation, what legal arguments and sources of law must be considered?

Case Study No. 16 – International Jurisdiction and Applicable Law

Jozef, a German citizen, is a successful football player of the football club Slovan Bratislava, with whom he has an employment contract. He agrees with his employer on a short six-month loan for the Hungarian club in Budapest. After returning from the loan, he demands payment of travel expenses from the Bratislava club. Slovan Bratislava will bequeath him with their claims to the Hungarian club. Jozef unilaterally terminates his employment contract, refuses to play for Slovan and suddenly returns to Germany. Both he and Slovan are considering filing a lawsuit.

Questions:

1. In the case of which claims and against which entity is there a foreign element in the given obligation relationship?

2. The courts of which countries have jurisdiction to decide on mutual claims between Jozef, Slovan Bratislava and the Hungarian club? Which legal regulation is decisive?

3. According to which legal regulation will the court determine the applicable law and what will be the result of this determination?

4. What options do Jozef and Slovan Bratislava have to determine the applicable law when concluding an employment contract?

Case Study No. 17 – International Jurisdiction, EU Procedural and Applicable Law

Miroslav lives just outside Bratislava. One day he reads an advertisement on the web site of a business Tip Cars s.r.o. a motor dealer company trading in the city of Brno in the Czech Republic, for sale of a second hand BMW car. The web site is available in several languages including Czech, Slovakian and Polish as well as English and French.

The car is attractively priced and he decides to go and have a look at it with the possibility of buying it for his private use.

Miroslav goes to the showroom of the company in Brno and agrees to buy the car. He agrees a trade-in price for his existing car of 370,500 CZK against the total price of the car of 125,000 CZK with the balance to be paid at 12.500 per week. He takes delivery of the BMW at the showroom and decides to try it out by returning to Bratislava via Vienna where he intends to attend a football match. While driving to Vienna not long after crossing the border into Austria he has an accident as a result of which he is injured and the car is damaged.

Miroslav sustains such injuries that he has to have hospital treatment; as a result he is unable to work for some weeks and the car is a write-off.

It turns out as a result of investigation into the accident that the steering of the car was faulty and that this caused the accident.

Miroslav, understandably, decides not to pay the remainder of the price for the car and wishes to sue company for his losses; the following questions are raised by him on which he seeks your advice.

Questions:

1. Where can Miroslav raise an action against Tip Cars for the loss, injury and damage sustained by him?

2. What would be the basis of his claim?

3. What is the position as regards applicable law and which EU instruments and which rules thereof are relevant?

4. Can Miroslav make use of the EOP procedure?

5. If he does make use of the EOP and Tip Cars a statement of opposition what happens next?

6. Can Miroslav make use of the ESCP?

7. If Miroslav raises an ESCP how should evidence be heard?

Case Study No. 18 – International Jurisdiction

Suzanne has purchased a ticket online for a flight operated by Ryanair between Porto (Portugal) and Barcelona (Spain). By her action brought, before the referring court, under Article 7 of Regulation No 261/2004, the applicant in the main proceedings sought compensation in the amount of EUR 250 in respect of the delay to the flight at issue in the main proceedings. Applicant in the main proceedings is neither domiciled nor resident in Spain, that the defendant in the main proceedings has its registered office in Ireland, and that it has a branch in Girona (Spain). Ryanair did not respond to application either within proceedings.

Having regard to the fact that the defendant in the main proceedings has a branch in the town of Girona, the referring court is unclear as to whether it could also have international jurisdiction to hear the dispute in the main proceedings on the basis of the special jurisdiction of courts in the place where a branch is situated. The Spanish court considers that, with a view to ruling on whether to decline jurisdiction by a final decision which would bring the proceedings to a close, or on the admissibility of the action brought by the applicant in the main proceedings and giving a decision on the substance of the case, it requires an interpretation of Article 26 of Regulation No 1215/2012 on the implied prorogation of jurisdiction, as well as Article 7(5) of that regulation, on the alternative jurisdiction of courts in the place where the branch is situated in disputes concerning the operation of that branch.

Questions:

1. Does the concept of implied prorogation of jurisdiction laid down in and governed by Article 26 of [Regulation No 1215/2012] require, in all respects, an autonomous interpretation common to all the Member States, which cannot, therefore, be made subject to limitations laid down in Member States' rules on domestic jurisdiction?

2. Is the concept of implied prorogation of jurisdiction laid down in and governed by Article 26 of [Regulation No 1215/2012] a "pure" rule of international jurisdiction, which determines exclusively the courts of a particular Member State but leaves it to the procedural law of that Member State to specify the court with territorial jurisdiction or, on the other hand, is it a rule of both international and territorial jurisdiction?

3. In the light of the facts of the case, can a situation involving a flight which is operated by an airline domiciled in another Member State, but which departs from or arrives in a Member State where that airline has a branch providing ancillary services to the airline but through which the tickets were not purchased, be deemed to constitute a dispute arising out of the operations of a branch, agency or other establishment, which is the basis for the connecting factor for the ground of jurisdiction laid down in Article 7(5) of [Regulation No 1215/2012]?

Case Study No. 19 – International Jurisdiction

Peter was admitted to the Slovak Bar Association and was registered as Slovak solicitor. Later he has taken up residence in France, while remaining registered with the SBA, to which he paid annual fees until 2012. By a letter of 29 May 2015, the President of SBA requested that Peter pay the fees owed for the years 2013 to 2015, offered to reduce the amount of those fees to that of the insurance premiums paid by the bar association and to accept payments by instalments. It is apparent from that letter that registration with the bar association 'confers not insignificant advantages in terms of insurance' and that the fees payable to that association 'are, in fact, essentially made up of insurance premiums'. Having received no reply to that letter or any payment by Peter, SBA issued a summons dated 17 May 2017 for Peter to appear before the referring court, the Slovak court, seeking an order for payment by Peter of the sum of EUR 7 277.70, together with interest and the costs and expenses of the proceedings.

Questions:

1. Does dispute concerning a lawyer's obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of Bressels I rec regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain?

2. The court of which EU Member State has always jurisdiction.

3. Is the action brought by a Bar Association seeking an order that one of its members pay the annual professional fees owed to it a matter "relating to a contract" within the meaning of Article [7(1)(a) of Regulation No 1215/2012] ?

Case Study No. 20 – International Jurisdiction and Recognition of foreign Authentic Instruments

Pula Parking, a company owned by the town of Pula (Croatia), carries out, pursuant to a decision of the mayor of that town, the administration, supervision, maintenance and cleaning of the public parking spaces of that town, the collection of parking fees and other related tasks. On 8 September 2010, Mr Tederahn, who is domiciled in Germany, parked his vehicle in a public parking space of the town of Pula. Pula Parking issued Mr Tederahn with a parking ticket. As provided in the parking contract, which was entered into as a result of the issuing of that ticket, Mr Tederahn was required to pay that ticket within eight days of its date of issue, after which late payment interest accrued. Since Mr Tederahn did not settle the sums due within the period prescribed, Pula Parking lodged, on 27 February 2015, with a notary whose office is in Pula, an application for enforcement on the basis of an 'authentic document' pursuant to Article 278 of the Law on Enforcement. The 'authentic document' submitted by Pula Parking was a certified extract from its accounting records according to which, in view of the invoice of 8 September 2010, an amount of HRK 100 (Croatian kunas) (approximately EUR 13) became due on 16 September 2010.

The notary issued a writ of execution on 25 March 2015, on the basis of that document. Since Mr Tederahn lodged an opposition to that writ on 21 April 2015, the case was referred to the Općinski sud u Puli-Pola (Municipal Court of Pula, Croatia) pursuant to Article 282(3) of the Law on Enforcement. In his opposition, Mr Tederahn put forward a plea alleging that the notary who issued the writ of execution of 25 March 2015 did not have substantive and territorial jurisdiction on the ground that that notary did not have jurisdiction to issue such a writ on the basis of an 'authentic document' from 2010, against a German national or a citizen of any other EU Member State.

Questions:

1. Taking into account the legal nature of the relationship between the parties to the proceedings, is Regulation No 1215/2012 applicable in the present case?

2. Is Regulation No 1215/2012 applicable ratione temporis as the contract relating to the use of the parking space was concluded before the Republic of Croatia acceded to the European Union, on 1 July 2013?

3. The court of which EU Member State has jurisdiction?

4. Does Regulation No 1215/2012 relate also to the jurisdiction of notaries in the Republic of Croatia, i.e. notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', fall within the concept of 'court' within the meaning of that regulation?

Case Study No. 21 – International Jurisdiction - Exclusive jurisdiction in matters relating to rights in rem in immovable property

Mr Schmidt, domiciled in Austria, was the owner of immovable property in Vienna (Austria). By a notarial act of 14 November 2013, concluded in Vienna, he gifted the land to his daughter, Ms Schmidt, who has been entered in the land register as the owner of that immovable property from that date. At the time of the contract of gift, Ms Schmidt lived in Germany, where she continues to live.

It is apparent from the information in the documents before the Court that, following a psychiatric report which revealed the existence of serious issues dating back to May 2013, Mr Schmidt was placed under guardianship by a decision of 17 November 2014. By an action brought before the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna, Austria) on 24 March 2015, Mr Schmidt, represented by his guardian, sought the avoidance of the contract of gift of 14 November 2013 and, accordingly, the removal of the entry in the land register of Ms Schmidt's ownership of the immovable property on the ground that the entry was not valid. At the request of the applicant in the main proceedings, the application for registration of the action for the removal of an entry in the land register was granted, pursuant to Paragraph 61(1) of the GBG, by an order of 25 March 2015. Ms Schmidt claimed that the referring court lacked jurisdiction to hear and determine the action in the main proceedings, on the ground that Article 24(1) of Regulation No 1215/2012 did not grant that court jurisdiction since the action did not concern a right in rem in immovable property within the meaning of that provision. The Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) has doubts concerning the interpretation of Article 24(1) of Regulation No 1215/2012, referring, on the one hand, to the order of the Court of 5 April 2001, Gaillard (C-518/99, EU:C:2001:209), in which the application of the rule of exclusive jurisdiction in matters relating to rights in rem in immovable property was rejected as regards an action for rescission of a contract of sale relating to immovable property and, on the other hand, the judgment of 3 April 2014, Weber (C-438/12, EU:C:2014:212), according to which an action seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to immovable property falls within that exclusive jurisdiction.

The court makes clear that a judgment upholding the action for removal of an entry in the land register, made on the basis of Article 61(1) of the GBG, is enforceable both against Ms Schmidt and, due to the notice of legal action in the land register, against third parties who, over the course of the proceedings, have acquired rights in rem over the immovable property concerned.

Question:

1. Does a proceeding concerning the avoidance of a contract of gift on the ground of the donor's incapacity to contract and the registration of the removal of an entry evidencing the donee's right of ownership fall within the scope of Article 24(1) of Regulation No 1215/2012 which provides for exclusive jurisdiction over rights in rem in immovable property?

Case Study No. 22 – International Jurisdiction

Technos, a legal person based in France, expressed a wish to take part in a number of works in several existing power generating plants located in France. To that effect, it invited Hőszig to submit various tenders to it, with a view to contributing to those works as subcontractor. Thus, on 18 August 2009, Technos sent to Hőszig, by email, a list of the metal structures that it would, where appropriate, be asked to manufacture, a description of the technical requirements and the general terms and conditions of Technos (December 2008 version) ('the general conditions'). Following the tender submitted by Hőszig on the basis of that information, several business contracts for the preparation of metallic structures, to be manufactured in Hungary and integrated in electrical power plants, were concluded remotely between the parties. It is common ground between the parties that the earliest of those contracts was dated 16 December 2010. Those parties concluded several additional contractual provisions or agreed on contractual changes with a view to carrying out the work. In the list entitled 'Documentation used' in the instrument witnessing the first contract, the following was set out:

> The present order
>
> Technical specification with reference T91000001/1200, C
>
> General terms and conditions of Technos (December 2008 version)
>
> Those documents are applicable in this order.

On the last page of that contract, drafted in English, it was also stated that 'the order lists all the most important documents and information necessary for its execution. You must ensure that you have these documents with the appropriate references and the documents required by them. If you do not have them, do not hesitate to request the missing documents from us in writing'. The last paragraph of that contract stated, moreover, that 'the supplier declares that he has read and accepts the conditions of this order, the general terms and conditions in force as annexed and any conditions of framework agreements or contracts'

Pursuant to Clause 23.1 of the general conditions:

"The order and its interpretation shall be subject to French law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply. Any dispute arising from or relating to the validity, limitation, performance or termination of the order which cannot be settled amicably between the parties shall be subject to the exclusive and final jurisdiction of the Courts of Paris, including expedited proceedings, orders for a stay of proceedings and interim measures".

Question:

Is Article 23(1) of the Brussels I Regulation must be interpreted as meaning that a jurisdiction clause, such as that at issue in the main proceedings, which, first, is set out in the client's general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and the precision of the content of such a clause?

Case Study No. 23 – International Jurisdiction

At an unspecified date, prior to the year 2011, Mr Kuhn, residing in Vienna (Austria), acquired, through a custodian bank established in Austria, sovereign bonds with a nominal value of EUR 35000 issued by the Hellenic Republic, subject to Greek law and traded at the Athens stock exchange (Greece) as 'uncertificated', that is to say book-entry, securities. Those securities were registered in the Greek Central Bank's securities settlement system. According to that court, it follows from the provisions of Law 2198/1994 and from the terms of the sovereign bonds at issue that, first, the participants in the securities settlement system of the Greek Central Bank became the holders and creditors of those bonds, transferred on being credited to the participants' accounts, provided that, if those participants can grant rights over those bonds to third-party investors, the transaction by which those rights are granted is effective only between the parties concerned and expressly does not operate to the benefit or detriment of the Hellenic Republic. Following the adoption of Law 4050/2012, the Hellenic Republic converted the bonds acquired by Mr Kuhn by replacing them with new sovereign bonds of a lower nominal value. Mr Kuhn brought an action before the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Law Matters, Vienna, Austria) against the Hellenic Republic, with the aim of obtaining the fulfilment of the terms of the bonds at issue or compensation for non-fulfilment of those terms.

Question:

1. In a situation such as that in the main proceedings, in which a person has acquired, through a custodian bank, sovereign bonds issued by a Member State, Article(7)(1)(a) of Regulation No 1215/2012 must be interpreted to the effect that the 'the place of performance of the obligation in question' is determined by the borrowing terms established at the time that the bonds were issued or by the place of effective fulfilment of those terms, such as the payment of interest?

Case Study No. 24 – International Jurisdiction

The applicants in the main proceedings have concluded an air transport contract with easyJet Airline, an airline headquartered in the United Kingdom, for a one-way flight from Rome Fiumicino (Italy) — Corfu (Greece) on 4 August 2015, at 20.20. The outward flight was announced delayed and then finally cancelled and postponed to the next day. The applicants in the main proceedings were not offered either boarding on another flight of another airline, or the possibility of consuming a meal or snack, or any other form of assistance, compensation or reimbursement, despite a formal request to that effect addressed to easyJet Airline.

On 28 June 2016, the applicants in the main proceedings, who are domiciled in Rome (Italy), brought an action before Rome District Court, Italy, seeking an order that easyJet Airline pay the compensation referred to in Articles 5, 7 and 9 of Regulation No 261/2004 and compensate for further material damage and non-material damage resulting from easyJet Airline's failure to fulfil its contractual obligations.

EasyJet Airline raised two objections to the jurisdiction of the court hearing the case, the first based on the value of the dispute and the second on the rules on territorial jurisdiction. Rome District Court) rejected the first objection to jurisdiction, it noted, in relation to the second, that its jurisdiction depended on the applicable law — national law or Union law — and on the interpretation to be given to it. In that regard, the court has doubt whether the Montreal Convention applies to the dispute in the main proceedings, at least to part of it, or whether that dispute falls exclusively within the scope of Regulation No 261/2004.

Question:

1. If a party whose flight has been delayed or cancelled jointly requests, not only the standardised and lump-sum compensation provided for by Articles 5, 7 and 9 of Regulation No 261/2004, but also the further compensation referred to in Article 12 of the Regulation, must Article 33 of the Montreal Convention apply, or is 'jurisdiction' (both international and local) governed by Article 5 of Regulation No 44/2001?
2. In the first hypothesis in question 1, must Article 33 of the Montreal Convention be interpreted to the effect that it governs only the allocation of jurisdiction among the States Parties, or as meaning that it also governs local jurisdiction within the individual State?

Case Study No. 25 – International Jurisdiction

Ellmes Property Services is a company established in the United Kingdom. That company and SP are co-owners of an apartment building in Zell am See (Austria). Ellmes Property Services is the owner of an apartment in that building which was designated for residential purposes. It uses that apartment for touristic purposes by regularly renting it out to holidaymakers. By an action for a cessation order brought before the Bezirksgericht Zell am See (District Court, Zell am See, Austria), SP sought the cessation of that 'touristic use', on the ground that it is contrary to the designated use of that building and arbitrary, failing any consent on the part of the other co-owners, with the result that such use interferes with SP's right of co-ownership. As regards the jurisdiction of that court, SP relied on the exclusive jurisdiction provided for in the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012. Ellmes Property Services contested the local and international jurisdiction of that court

There is doubt, whether the action in question may fall under exclusive jurisdiction under the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 or, alternatively, special jurisdiction under point 1(a) of Article 7 of that regulation.

Question:

1. Is the first alternative in the first subparagraph of [point 1 of Article 24] of Regulation [No 1215/2012] to be interpreted as meaning that actions brought by a co-owner seeking to prohibit another co-owner from carrying out changes to his property subject to co-ownership, in particular to its designated use, arbitrarily and without the consent of the other co-owners, concern the assertion of a right in rem?
2. If the first question should be answered in the negative: Is [point 1(a) of Article 7] of [Regulation No 1215/2012] to be interpreted as meaning that the actions referred to [in the first question] concern contractual obligations to be performed at the location of the property?

Case Study No. 26 – International Jurisdiction

Passenger Rights, a company specialised in the recovery of air passengers' claims, now DelayFix, has requested the District Court for the Capital city of Warsaw, Poland, to order the airline Ryanair, on the basis of Regulation No 261/2004, to pay a sum of EUR 250 in compensation for the cancellation of a flight between Milan (Italy) and Warsaw (Poland), a passenger of that flight having assigned that company their claim with respect to that airline. Ryanair raised a plea alleging that the Polish courts do not have jurisdiction, on the grounds that Section 2.4 of its general terms and conditions of carriage, to which that passenger agreed when he purchased his ticket online, provides that those terms and conditions are subject to the jurisdiction of the Irish courts. According to Ryanair, DelayFix, as the assignee of that passenger's claim, is bound by that clause. That airline contended that, as DelayFix was not a consumer, it could not benefit from the jurisdictional protection provided for consumer contracts.

Question:

Should Article 25 of Regulation No 1215/2012 and Article 2(b), Article 3(1) and (2) and Article 6(1) of Directive 93/13 must be interpreted as meaning that, for the purposes of contesting the jurisdiction of a court to hear an action for compensation on the basis of Regulation No 261/2004 and brought against an airline, a jurisdiction clause incorporated in a contract of carriage between a passenger and that airline can be enforceable by the latter against a collection agency to which the passenger has assigned the claim?

Case Study No. 27 – International Jurisdiction - jurisdiction clause

Doumer SNC ('Doumer'), a property developer, had renovation work carried out on a building complex in Courbevoie (France). That company is insured by Axa Corporate whose registered office is in Paris (France). In the course of that work air-conditioning units were installed. Those units are equipped with compressors which were manufactured by Refcomp, whose registered office is in Italy, purchased from that company and fitted by Climaventa whose registered office is also in Italy, then sold to Doumer by the company Liebert to whose rights Emerson is now subrogated. Emerson, whose registered office is in France, is insured by Axa France IARD, which is also established in France. As irregularities occurred in the air-conditioning system, an expert's report established that those failures were caused by a defect in the manufacturing of the compressors. Subrogated to the rights of Doumer, to which it paid compensation, Axa Corporate sued the manufacturer Recomp, the fitter Climaveneta and the seller Emerson before the Tribunal de grande instance de Paris (Regional Court, Paris) seeking an order that they pay in solidum compensation for the damage suffered. Refcomp challenged the jurisdiction of the Tribunal de grande instance de Paris, relying on a jurisdiction clause in favour of the Italian courts incorporated in the contract concluded between it and Climavenet.

Question:

1. Is a clause conferring jurisdiction which has been agreed, in a chain of contracts under Community law, between a manufacturer of goods and a buyer in accordance with Article 23 of [the] Regulation [...] effective as against the sub-buyer and, if so, under what conditions?

2. Is the clause conferring jurisdiction effective as against the sub-buyer and its subrogated insurers even if Article 5(1) of [the] Regulation [...] does not apply to the sub-buyer's action against the manufacturer, as the Court held in its judgment [in Case C-26/91] Handte [1992] ECR I-3967]?

Case Study No. 28 – Applicable Law - Rome II

On 29 August 2007 during a stay in France, Mr Homawoo sustained a road traffic accident caused by vehicle being driven by a person insured by GMF. On 8 January 2009, Mr Homawoo brought proceedings for personal injury and indirect damages before the High Court of Justice (UK) against, in particular, GMF.

Before UK court, the applicant in the main proceedings claimed that the assessment of damages is governed by English law as the lex fori, as determined by conflict-of-law rules applicable to the dispute in the main proceedings. He submitted that the Regulation was not applicable ratione temporis because, in accordance with Articles 31 and 32 thereof, it does not apply to events giving rise to damage which occur, as in the case in the main proceedings, before 11 January 2009, the date set for its entry into force. In the alternative, the applicant submitted that the Regulation does not apply where, irrespective of the date on which the damage occurred, the relevant proceedings were commenced prior to that date.

Question:

1. Are Articles 31 and 32 of [the Regulation], in conjunction with Article 297 TFEU, to be interpreted to require a national court to apply [the Regulation], and in particular Article 15(c) thereof, in a case where the event giving rise to the damage occurred on 29 August 2007?

   Is the answer to Question 1 affected by either of the following facts:

   (i) that the proceedings seeking compensation for damage were commenced on 8 January 2009;

   (ii) that the national court had not made any determination of the applicable law before 11 January 2009?

Case Study No. 29 – Applicable Law - Rome II

Mr Lazar, a Romanian national, has claimed compensation for material and non-material damage sustained as a result of the death of his daughter, a Romanian national resident in Italy, in a road traffic accident in that Member State caused by an unidentified vehicle. The insurance company Allianz SpA was designated as the company designated by the guarantee fund for road accident victims. The mother and grandmother of the victim, both Romanian nationals residing in Italy, have also intervened in the proceedings and seek compensation for material and non-material damage they have sustained on account of her death. Since the applicants claim compensation for harm they personally suffered on account of the death a member of their family, it is important to know whether this constitutes 'damage' within the meaning of Article 4(1) of the Rome II Regulation, or an indirect consequence of a tort or delict within the meaning of the same provision. The answer to that question depends on the substantive law to be applied by the referring court in order to adjudicate on the existence and recoverable nature of the damage relied on before it by the applicant resident in Romania. In that regard, that court sets out the reasons which might lead to the application of both Italian and Romanian law to the dispute before it. Thus, under Italian law, the damage resulting from the death of a family member is treated as having been suffered directly by the family member and, in particular, is deemed to amount to an infringement of his personal rights. Accordingly, in the dispute in the main proceedings, the applicant relies on damage which, on the basis of that national law, must be regarded as personal to him and as representing the material consequence of the death of his family member. In other European legal systems, however, that type of damage is not recognised in the same way. Therefore, although, according to Italian law, there is direct damage sustained by an entitled person on account of the death of a member of his family, the referring court is unsure whether, in the light of the case-law of the Court of Justice relating to the Brussels I Regulation, the right to compensation for that damage may constitute, for the purposes of the Rome II Regulation, one of the 'indirect consequences' of the tort or delict, namely the road traffic accident.

Question

Must Article 4(1) of the Rome II Regulation must, in order to determine the law applicable to a non-contractual obligation arising from a road traffic accident, be interpreted as meaning that the damage arising from the death of a person in such an accident, which occurred in the Member State of the court seised, sustained by close relatives of the deceased who reside in another Member State, must be regarded as 'damage' or as 'indirect consequences' of that accident, within the meaning of that provision?

Case Study No. 30 – Applicable Law - Rome II

On 1 September 2011, near Mannheim (Germany), a tractor unit coupled with a trailer overturned on the road while performing a U-turn. On the basis of the findings made by police officers who attended the site of the accident, the driver of the tractor unit was held to be responsible. Consequently, the insurer of that vehicle, a branch of 'ERGO Insurance' SE, paid the victims of the accident 7760.02 Lithuanian litas (LTL) (approximately EUR 2255). That insurer then brought an action before the referring court seeking an order for the insurer of the trailer, that is the Lithuanian branch of 'If P&C Insurance' AS, to pay half of the compensation on the ground that it had to assume joint liability for the damage caused. The court has doubts how to determine the law applicable to the dispute between those two insurers.

Question

How to interpret the Rome I and II Regulations and Directive 2009/13 in order to determine the law or laws applicable in third party was bought by the insurer of a tractor unit, which compensated the victim of an accident caused by the driver of that vehicle against the insurer of the trailer which, at the time of the accident, was coupled to that vehicle?

Case Study No. 31 – Applicable Law - Rome I

Amazon EU is a company established in Luxembourg belonging to an international mail order group which, among other activities, via a website with a domain name with the extension .de, addresses consumers residing in Austria, with whom it concludes electronic sales contracts. The company has no registered office or establishment in Austria. Until mid-2012 the general terms and conditions in the contracts concluded with those consumers were worded as follows: "*Luxembourg law shall apply, excluding the United Nations Convention on the International Sale of Goods*."

The Wolf, which is an entity qualified to bring actions for injunctions within the meaning of Directive 2009/22, brought an action before the Austrian courts for an injunction to prohibit the use of all the terms in those general terms and conditions and for publication of the judgment to be delivered, as it considered that those terms were all contrary to legal prohibitions or accepted principles of morality.

Question

1. How the Rome I and Rome II Regulations should be interpreted for the purpose of determining the law or laws applicable to an action for an injunction within the meaning of Directive 2009/22 brought against the use of allegedly unlawful contractual terms by an undertaking established in one Member State which concludes contracts by way of electronic commerce with consumers resident in other Member States, in particular in the State of the court seised.

Case Study No. 32 – Applicable Law - Rome I

Mr Nikiforidis has been employed since 1996 as a teacher at a primary school in Nuremberg run by the Hellenic Republic. Over the period from October 2010 to December 2012, the Hellenic Republic reduced Mr Nikiforidis's gross remuneration, which had previously been calculated in accordance with German collective bargaining law, by EUR 20262.32, on account of the enactment of Laws No 3833/2010 and No 3845/2010 by the Greek legislature. Those laws were designed to implement the agreements that the Hellenic Republic had concluded with the European Commission, the European Central Bank and the International Monetary Fund (UN), and also Decision 2010/320.

Mr Nikiforidis brought legal proceedings in Germany claiming additional remuneration for the period from October 2010 to December 2012 and seeking to obtain payslips.

Questions:

1. Is the Rome I Regulation applicable under Article 28 of that regulation to employment relationships exclusively in the case where the legal relationship was formed by a contract of employment entered into after 16 December 2009, or does every subsequent agreement by the contracting parties to continue their employment relationship, whether with or without variation, render that regulation applicable?
2. Does Article 9(3) of the Rome I Regulation exclude solely the direct application of overriding mandatory provisions of another country in which the obligations arising out of that contract are not to be performed, or have not been performed, or does that provision also exclude indirect regard to those mandatory provisions in the law of the Member State the law of which governs the contract?
3. Is the principle of sincere cooperation enshrined in Article 4(3) TEU relevant, for legal purposes, for the decision of national courts on whether overriding mandatory provisions of another Member State are directly or indirectly applicable?

Case Study No. 33 – Jurisdiction and Applicable Law

Mr Postnov and Ms Postnova, domiciled in Dublin (Ireland), are the owners of an apartment in an apartment block in Bulgaria, which they purchased under a sales contract concluded on 30 May 2008. At the annual general meetings of the owners of property in that building, held in January 2013, January 2014, February 2015, March 2016 and March 2017, decisions relating to annual financial contributions to the budget of the association of property owners, for the maintenance of the communal areas, were adopted. Claiming that Mr Postnov and Ms Postnova had not entirely fulfilled their obligation to pay those contributions, Mr Kerr, in his capacity as the building manager, lodged an application with the District Court in Bulgaria, seeking an order requiring them to pay those contributions, together with compensation for delay.

Questions:

1. Can Article 7(1)(a) of Regulation No 1215/2012 be interpreted as meaning that a dispute concerning a payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, — where that decision has been taken by a majority of members, but binds all members — must be regarded as falling within the concept of 'matters relating to a contract' within the meaning of that provision?
2. Is a dispute concerning a payment obligation resulting from a decision of a general meeting of the owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of Article 4(1)(b) of Regulation No 593/2008, or a contract concerning a right in rem in immovable property, within the meaning of Article 4(1)(c) of that regulation

Case Study No. 34 – Applicable Law - Rome I

Between January 2012 and June 2014, Peter, a consumer resident in Austria, entered into a framework agreement with ShareWood, a company established in Switzerland, and a further four purchase contracts for the acquisition of teak and balsa trees in Brazil. The framework agreement also included a lease agreement and a service agreement. The ground rent for that lease agreement, which granted the right to grow the trees in question, was included in the purchase price of those trees. The service agreement provided that ShareWood would manage, administer, harvest and sell the trees and would remit the net return on the timber to Peter.

Later Peter brought an action before the Handelsgericht Wien (Commercial Court, Vienna, Austria) seeking a declaration that ShareWood had failed to fulfil its obligation to take ownership of the trees in question and that ShareWood and VF, director and member of the board of directors of that company, should be jointly and severally liable to pay him the sum of EUR 201 385.38 plus interest and costs. Furthermore, in that action, Peter argued that, as a consumer, he had, under Austrian law, the right to terminate the three other purchase contracts referred to in paragraph 6 above and to obtain damages.

Question

1. Can Article 6(4)(c) of the Rome I Regulation t be interpreted as meaning that a contract of sale, including a lease agreement and a service agreement, relating to trees planted on leased land for the sole purpose of being harvested for profit, constitutes a 'contract relating to a right in rem in immovable property or a tenancy of immovable property' within the meaning of that provision?

Case Study No. 35 – Jurisdiction

Mr Rouard was engaged in 1977 by the company Laboratoires Beecham Sévigné, the seat of which was in France, and he was posted to various African States. Pursuant to a new contract of employment concluded in 1984 with Beecham Research UK, another company in the group, which was registered in the United Kingdom, Mr Rouard was engaged by that company and sent to Morocco. Under that contract of employment, his new employer undertook to maintain the contractual rights acquired by Mr Rouard under his initial contract of employment with Laboratoires Beecham Sévigné, and to preserve his rights derived from length of service and his entitlement to compensation in the event of dismissal. Mr Rouard was dismissed in 2017. In 2018 he brought an action before the Employment Tribunal in Frane against Laboratoires Glaxosmithkline, which has assumed the rights of Laboratoires Beecham Sévigné, the seat of which is in France, and Glaxosmithkline, which has assumed the rights of Beecham Research UK, the seat of which is in the United Kingdom. Mr Rouard requests that those companies be ordered jointly and severally to pay him various amounts of compensation and damages for non-compliance with the dismissal procedure, dismissal without genuine and serious cause and wrongful breach of his employment contract.

Question

1. Does the rule of special jurisdiction stated in Brussels I rec Regulation …, by virtue of which a person domiciled in a Member State may be sued "where he is one of a number of defendants, in the courts for the place where any of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings", apply to proceedings brought by an employee before a court of a Member State against two companies belonging to the same group, one of which, being the one which engaged that employee for the group and refused to re-employ him, is domiciled in that Member State and the other, for which the employee last worked in non-Member States and which dismissed him, in another Member State, when that applicant relies on a clause in the employment contract to claim that the two [companies] were his co-employers from whom he claims compensation for his dismissal or does the another rule in Brusells I rec Regulation, by virtue of which, in matters relating to individual contracts of employment, jurisdiction is to be determined by Section 5 of Chapter II [of that regulation]?

Case Study No. 36 – International Jurisdiction

Peter domiciled in Slovakia, made a single booking with Lufthansa AG for a flight, scheduled for 27 April 2019, from Warsaw (Poland) to Malé (Maldives) with a connection in Frankfurt am Main (Germany). The first leg of that flight, from Warsaw to Frankfurt am Main, was operated by LOT Polish Airlines. Due to delayed departure, Peter landed late in Frankfurt-am-Main and missed his connecting flight to Malé, operated by Lufthansa. He only reached his final destination, Malé, after a delay of more than four hours. The applicant in the main proceedings requested, on the basis of Regulation No 261/2004, that the Amtsgericht Frankfurt order LOT Polish Airlines to pay each of them compensation of EUR 600, since the distance between Warsaw and Malé is more than 3500 kilometres, and to reimburse their legal costs. Amtsgericht Frankfurt refused this application, as court has no jurisdiction, since neither the place of departure nor the place of arrival of the flight provided for in the contract of carriage concerned was located within its jurisdiction.

Question:

1. Shall the court of first instance base its international jurisdiction on Article 7(1)(b) of Regulation No 1215/2012 (the fact that Warsaw and Malé constitute places of performance of the obligation arising from that contract of carriage does not preclude the existence of other places which may also be classified as places of performance of that obligation within the meaning of that provision)?
2. Can place of performance, within the meaning of that provision, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs, can also be the place of arrival of the first leg of the journey where transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation [No 261/2004] arises from the delay of the first leg of the journey and is brought against the operating air carrier of that first leg?

Case Study No. 37 – International Jurisdiction

Article 33(1) of the Montreal Convention, entitled 'Jurisdiction', is worded as following:

> 'An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.'

Mr Rehder, who resides in Munich, booked a flight from Munich to Vilnius with Air Baltic, the registered office of which is in Riga (Latvia). The distance between Munich and Villnius is slightly less that 1 500 kilometres. Approximately 30 minutes before the scheduled time of departure from Munich, passengers were informed that their flight had been cancelled. After his booking had been changed by Air Baltic, the applicant took a flight via Copenhagen to Vilnius, where he arrived more than six hours after the flight which he had initially booked should have landed.

By an application to the German court, Mr Rehder requested that Air Baltic be ordered to pay him compensation in the amount of EUR 250 in accordance with Articles 5(1)(c) and 7(1)(a) of Regulation No 261/2004. Holding that the air transport services are provided at the aircraft's place of departure, which implies that the place of performance of the contractual obligation, within the terms of the second indent of Article 5(1)(b) of Regulation No 44/2001, is that of the airport of departure, in this case Munich airport.

Questions:

1. Is the right which the applicant in the main proceedings relies on in the present case, which is based on Article 7 of Regulation No 261/2004, a passenger's right to a standardised and lump-sum payment following the cancellation of a flight, a right which is independent of compensation for damage in the context of Article 19 of the Montreal Convention?
2. 2. Is the second indent of Article 5(1)(b) of Regulation [No 44/2001] to be interpreted as meaning that in the case also of journeys by air from one Member State to another Member State, the single place of performance for all contractual obligations must be taken to be the place of the main provision of services, determined according to economic criteria?
3. 3. Where a single place of performance is to be determined: what criteria are relevant for its determination; is the single place of performance determined, in particular, by the place of departure or the place of arrival of the aircraft?'

Case Study No. 38 – International Jurisdiction

Helmut, German citizen, domiciled in Bonn has used Hungarian Motorway but without payment. The Hungarian Law on road traffic constitutes the legal basis of Decree No 36/2007 of the Minister for Economic Affairs and Transport on tolls for motorways, expressways and main roads. Under Paragraph 7/A(1) of that decree, the supplementary charge is payable if it is established that a vehicle does not have a valid toll ticket. Subparagraph 7 of that paragraph provides that that charge is collected by Nemzeti Útdíjfizetési Szolgáltató

Nemzeti Útdíjfizetési Szolgáltató Zrt. had authorised Ungarische Autobahn Inkasso GmbH ('UAI'), the registered office of which is in Eggenfelden (Germany), to identify the vehicles registered in Germany which are affected by the supplementary charge, and their holders, and to collect that charge. After having identified the holder of the vehicle concerned by means of that vehicle's registration plate, UAI claims from that person, by an initial letter of formal notice, the supplementary charge of HUF 14875, together with recovery fees. If payment is not made following that first letter of formal notice, the amount of the supplementary charge is raised to HUF 59500. UAI takes the view that the dispute is based on a contractual relationship governed by private law and states that it must comply with the rules of ordinary law for the purposes of recovering its debt. Helmut argues, that in so far as the user of a toll road has not purchased a toll ticket, the supplementary charge must be regarded as constituting a penalty imposed unilaterally on the basis of a rule of public law.

Question:

Is Article 1(1) of Regulation [No 1215/2012] to be interpreted as meaning that judicial proceedings brought by a State-owned company against a natural person domiciled in another Member State, for the purposes of recovering a debt, which is punitive in nature, for the unauthorised use of a toll road, come within the scope of that regulation?

Case Study No. 39 – International Jurisdiction and Recognition of Foreign Judgements

By application lodged on 3 November 2015, Mr Salvoni, a lawyer based in Milan (Italy), asked the Tribunale di Milano to issue a payment order argainst Ms Fiermonte, who resides in Hamburg (Germany), for an amount owed to him as consideration for the professional services rendered by him in connection with proceedings challenging the holographic will made by his client's father. Tribunale di Milano delivered a judgment ordering payment of a certain sum together with interest and costs. Since Ms Fiermonte did not challenge that judgment, Mr Salvoni submitted an application before that court, for the purposes of enforcement of that judgment, requesting that a certificate on the basis of Article 53 of Regulation No 1215/2012 be issued using the form set out in Annex I to that regulation. Finding that the relationship between Mr Salvoni and Ms Fiermonte was comparable to a consumer contract, the court concluded from the information concerning Mr Salvoni's professional activity that the judgment ordering payment was given in breach of the rules on jurisdiction set out in Chapter II, Section 4 of Regulation No 1215/2012 relating to jurisdiction in respect of consumer contracts. In that context, the court has doubts as to the powers conferred on the court called on to issue the certificate provided for in Article 53 of Regulation No 1215/2012 where a judgment, which has acquired the force of res judicata under national procedural law, was adopted in breach of the provisions relating to the rules on jurisdiction laid down by that regulation.

Questions:

1. Is certificate provided for in Article 53 of Regulation No 1215/2012, a judicial act?
2. Must Article 53 of Regulation No 1215/2012, read in conjunction with Article 47 of the Charter, be interpreted as precluding the court of origin which has been requested to issue the certificate provided for in Article 53 of that regulation in respect of a judgment which has acquired the force of res judicata from being able to ascertain of its own motion whether there has been a breach of the rules set out in Chapter II, Section 4 of that regulation, so that it may inform the consumer of any breach that is established and enable the him to assess, in full knowledge of the facts, the possibility of availing himself of the remedy provided for in Article 45 of that regulation?

Case Study No. 40 – Rome I and its material and universal application

According to Article 1 (Material scope) Rome I Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

According to Article 2 (Universal application) Rome I Regulation „Any law specified by this Regulation shall be applied whether or not it is the law of a Member State".

Questions:

Is Rome I Regulation applicable if:

1. EU Member State law is collided with another EU Member State law?
2. EU Member State law is collided with third state law?
3. Third state law is collided with another third state law?
4. Law of international organization or soft law is collided with EU Member State law?
5. Law of international organization or soft law is collided with third state law?
6. Law of international organization or soft law is collided with another law of international organization or soft law?