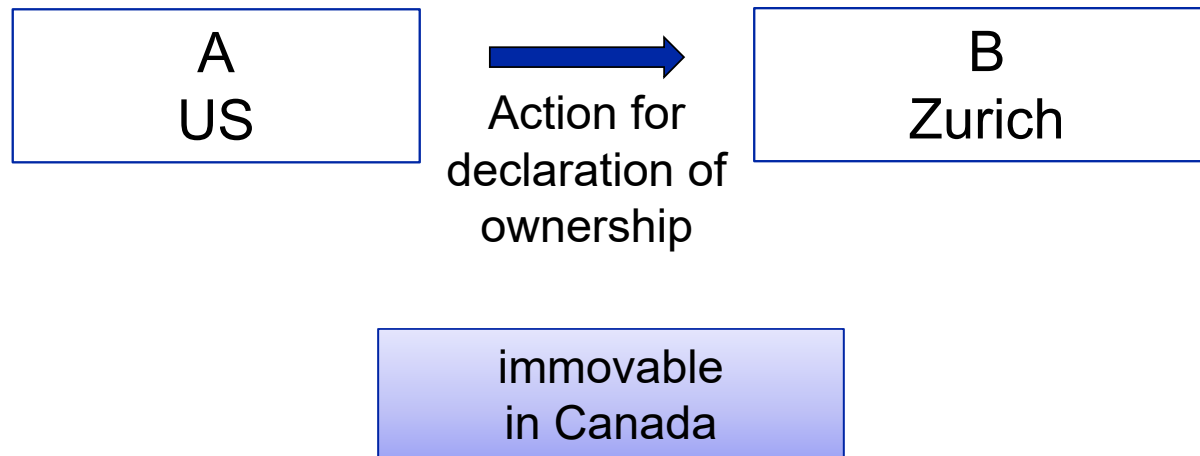




Territorial/personal scope of application of the LC – Case 3



Do the Zurich courts have international jurisdiction?



Territorial/personal scope of application of the LC – Case 3

- Material scope of the LC
 - civil or commercial matter, no exclusion from scope
- Territorial/personal scope of the LC
 - Article 22(1) LC not applicable, as immovable property situated in third state (Canada)
 - Application of Article 2(1) LC?
 - “reflexive effect” of Article 22(1) LC?
 - acceptance of exclusive jurisdiction asserted by third state?
 - see also Article 33 Brussels I *bis* Regulation
 - see also Article 6 of the 2019 Hague Judgments Convention



Territorial/personal scope of application of the LC – Case 4



Which rules apply to the choice-of-court agreement?

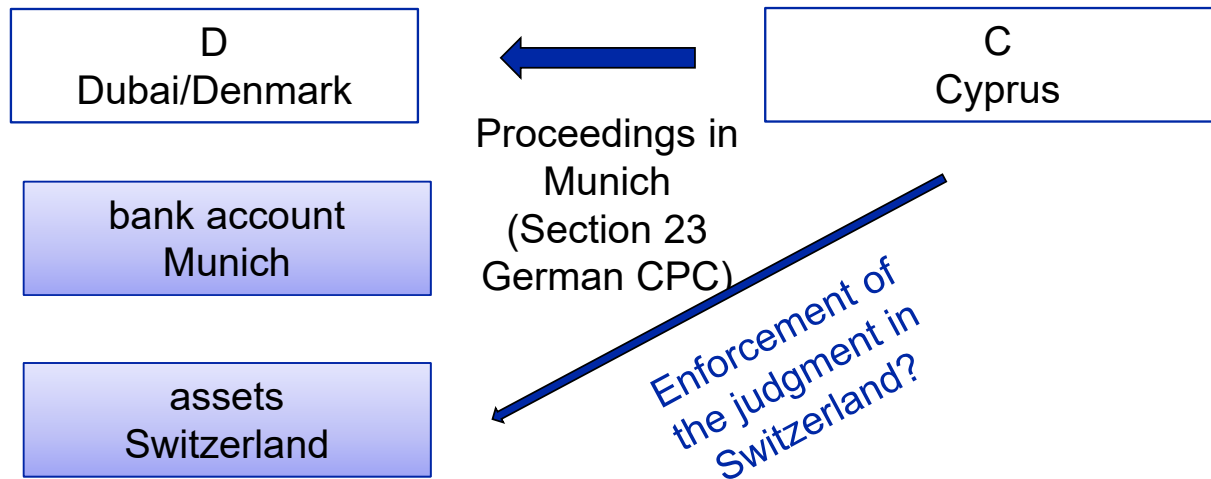


Territorial/personal scope of application of the LC – Case 4

- Material scope of the LC
 - civil or commercial matter, no exclusion from scope
- Territorial/personal scope of the LC
 - Article 23 LC: Prorogation of jurisdiction
 - at least one party domiciled in a CS and
 - prorogation (agreement in favour) of a court of a CS
- Result: Article 23 LC applies to the choice-of-court agreement



Territorial/personal scope of application of the LC – Case 5



D's objection: explicitly blacklisted jurisdictional basis

Will the objection be successful?



Territorial/personal scope of application of the LC – Case 5

- Material scope of the LC
 - civil or commercial matter, no exclusion from scope
 - Territorial/personal scope of the LC
 - Articles 32, 33(1), 38(1) LC
 - judgment given in a CS
 - recognition and enforcement sought in another CS
- Recognition and enforcement of a judgment given in a CS (Germany) in another CS (Switzerland) governed by the LC regardless of whether the LC also applied to jurisdiction!



Territorial/personal scope of application of the LC – Case 5

- D’s objection regarding Article 3(2) LC
 - Article 4(1) LC: third-state defendants (e.g. from Dubai) not protected from “exorbitant” fora
 - Article 35(3) LC: basic rule: no review of jurisdiction
 - review of jurisdiction only in cases mentioned in Article 35(1) LC
 - **Result: no basis for review of jurisdiction in the present case; objection will be unsuccessful, regardless of whether D is domiciled in Dubai or Denmark**



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Alternative fora (Articles 5–7 LC)



Alternative fora (Articles 5–7 LC) – general characteristics

- Alternative to the general forum at the defendant's domicile
- both international and local jurisdiction (with some exceptions)

Article 5

A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the State bound by this Convention in which the trust is domiciled;



Alternative fora (Articles 5–7 LC) – introduction

- Not available for
 - Matters falling in the scope of Article 22 LC (exclusive jurisdiction)
 - Cases where a valid exclusive jurisdiction agreement has been concluded
 - Insurance matters (Articles 8 ff. LC; exception: Article 5.5 LC)
 - Consumer contracts (Articles 15 ff. LC; exception: Article 5.5 LC)
 - Individual contracts of employment (Articles 18 ff. LC; exception: Article 5.5 LC)



Alternative fora based on connection between claim and forum (Article 5 LC)

- Purpose/rationale
 - connection to the subject matter in dispute
 - proximity of evidence
 - “stable” forum



Alternative fora based on connection between claim and forum (Article 5 LC)

- Territorial scope of application
 - Defendant domiciled in a CS
 - Action in *another* CS



Forum at the place of performance (Article 5.1 LC)

- “matters relating to a contract”
 - autonomous interpretation
 - “obligation freely assumed by one party towards another”



Forum at the place of performance (Article 5.1 LC)

- Place of performance – two approaches
 - Article 5.1**(b)** LC: **autonomous** approach
 - for contracts on the sale of goods or on the provision of services
 - relevant obligation: delivery of goods/provision of services
 - relevant place of performance: place of delivery/place of provision of services
 - autonomous criteria



Forum at the place of performance (Article 5.1 LC)

- Place of performance – two approaches (cont.)
 - Article 5.1(a) LC: “*lex causae*” approach
 - contracts that do not fall within the scope of Article 5.1(b) LC or where there is no place of performance under Article 5.1(b) LC in a CS
 - determination of the *lex causae* according to the applicable conflict-of laws rules
 - place of performance of the contractual obligation in question according to those rules

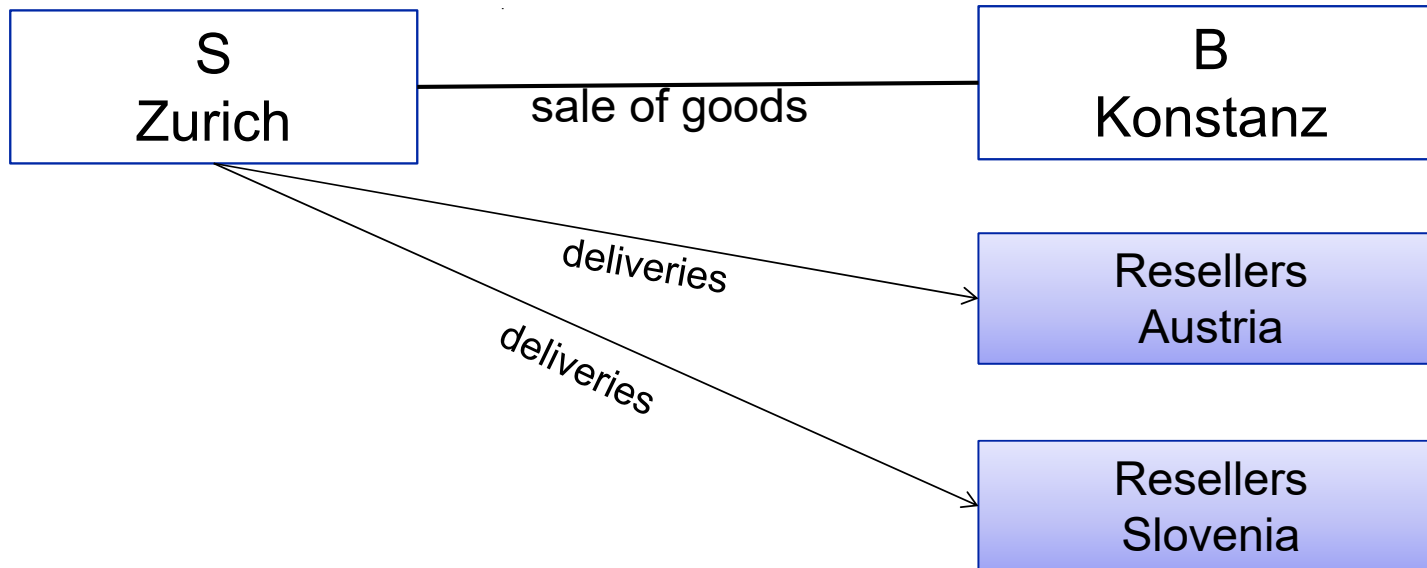


Forum at the place of performance (Article 5.1 LC)

- Agreed place of performance
 - Article 5.1(a) LC
 - agreement possible if permitted by *the lex causae*
 - “abstract” agreements must comply with the requirements for jurisdiction agreements (Article 23 LC)
 - Article 5.1(b) LC
 - determination of the place of performance by reference to the contract
 - unclear whether other agreements are possible (e.g., designating the place of performance of a payment obligation or referring to the *lex causae*)



Forum at the place of performance – Case 1 (1)



As B does not pay, S wants to know where B could be sued.



Forum at the place of performance – Case 1 (1)

- material scope of application of LC/Brussels I *bis* Regulation (civil/commercial matter, no exclusion from scope)
- no exclusive jurisdiction, no exclusive jurisdiction agreement, no insurance/consumer/employment dispute
- default rule of territorial/personal scope of application: defendant domiciled in a CS
- Article 64 LC: where EU defendant is sued in EU Member State [MS], Brussels I *bis* Regulation [probably] applies
- international jurisdiction of German courts: Article 4(1) Brussels I *bis* Regulation
- local jurisdiction: German national law



Forum at the place of performance – Case 1 (1)

- Alternative forum under Article 7.1(b) Brussels I *bis* Regulation [Article 5.1(b) LC]?
 - Territorial/personal scope of application
 - defendant's domicile in Member State (DE), action in another Member State (AT/SI)
 - Material scope of application of the forum at the place of performance
 - matter relating to a contract (obligation freely assumed by one party towards another)
- Material scope of application of Article 7.1(b) Brussels I *bis* Regulation [Article 5.1(b) LC]
 - sale of goods



Forum at the place of performance – Case 1 (1)

- Alternative forum under Article 7.1(b) Brussels I *bis* Regulation [Article 5.1(b) LC]? (cont.)
 - ECJ *Color Drack*: **multiple places of delivery** in one Member State (MS)
 - only the **main place of delivery**, determined based on economic criteria, is relevant
 - if no main place of delivery can be determined, the plaintiff may sue in the place of delivery of their choice
 - Application of the same principles where there are several places of delivery in different MS?
 - “mosaic theory”?
 - Article 7.1 Brussels I *bis* Regulation/Article 5.1 LC not applicable?