

European Civil Procedure

Handout 3

Alternative forum for tort claims (Article 5.3 LC/Article 7.2 Brussels I bis Regulation)

- “matters relating to a tort, *delict* or *quasi-delict*”
 - autonomous interpretation
 - all actions which seek to establish the **liability** of a defendant and which are **not related to a “contract”** within the meaning of Article 5.1 LC

- “place where the harmful event occurred or may occur”: **ubiquity principle**
 - place of the event giving rise to the damage
 - = place where the harmful event originated (place where the perpetrator committed the harmful act)
 - ECJ *Melzer*: no jurisdiction based on the allegation that a harmful act was committed within the court’s jurisdiction by another perpetrator of the damage [no “*wechselseitige Handlungsortzurechnung*”]

and

 - place where the damage occurred
 - = place where the event which gave rise to the damage produces its harmful effects; place of the initial damage
 - very casuistic approach by the ECJ

- “**mosaic approach**” for scattered damages
 - the courts for the place where the damage occurred have jurisdiction only with respect to the harm suffered in the Contracting State of the court seised (ECJ *Shevill*)
 - special rules for online personality rights infringements
 - an action in respect of all the damage caused can be brought before the courts of the Contracting State where the centre of the victim’s interests is based (ECJ *eDate* [natural persons], *Bolagsupplysningen* [legal persons])
 - an action for rectification and removal of harmful online content can be brought before the courts of the Contracting State where the centre of the victim’s interests is based (ECJ *Bolagsupplysningen*)

- an action for damages can be brought in every other Contracting State where the harmful content was accessible, but only with respect to the damage suffered in that Contracting State (ECJ *Gtflix*)
- reminder: alternatively, an action at the defendant's domicile in respect of rectification, removal, and (all) damages is also possible

Case 1

P is a farmer and grows vegetables on fields in Lindau (Germany). D is a corporation domiciled in Dornbirn (Austria). P claims that industrial emissions from D's factory, which is located in St. Margrethen (Switzerland), damages vegetables in her fields.

Where can P sue D for cessation of nuisance and for damages?

Case 2

A is a company domiciled in Prague (Czech Republic) that produces video games. B is a professional domiciled in Budapest (Hungary) who works in the same field. B made disparaging comments about A on several websites that are accessible in all EU Member States and Contracting States of the Lugano Convention.

Where can A sue B (1) for damages; (2) for rectification and removal?

**Alternative fora based on connexity between claims
(Articles 6 and 7 LC/Articles 8 and 9 Brussels I bis Regulation)**

- purpose/rationale
 - procedural economy – synergy effects through consolidation of related proceedings
 - avoiding the risk of irreconcilable judgments
- territorial/personal scope of application
 - defendant domiciled in a Contracting State
 - action in *another* (?) Contracting State
- connexity between claims
 - different (autonomous) criteria for each jurisdictional basis
 - no “general” forum based on connexity

Case 1

V is a car manufacturer domiciled in Germany. I is a car dealer domiciled in Zurich that imports and sells V's cars. A (domiciled in Aarau, Switzerland) bought a car produced by V from I at I's car dealership branch in Aarau. A claims that V equipped the car with software that manipulated data relating to exhaust gas emissions.

Can A sue V for damages in Zurich?

Case 2

P (domiciled in Passau, Germany) sued D (domiciled in Dietikon, Switzerland) before the District Court of Dietikon for repayment of a loan of CHF 50,000. In the statement of defence, D asserted a claim for damages against P (also in the amount of CHF 50,000) based on a different contract, and pleaded a set-off. P, in the reply to the statement of defence, asserts that the set-off defence is inadmissible because of lack of jurisdiction of the District Court of Dietikon for D's claim.

Assuming that there indeed is no jurisdiction of Swiss courts for D's claim: Is P's objection justified?