



**University of
Zurich^{UZH}**

Faculty of Law

European Civil Procedure

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Introduction



Getting started

Seller S (domiciled in Switzerland) and buyer F (domiciled in France) enter into a sales contract on goods. They conclude the contract in London. According to the contract, the goods shall be transported from Singapore to Rotterdam. F asserts that the goods are defective, and refuses to pay.

- Where can S sue for payment?
- How can process be served?
- What special rules are there regarding the conduct of the proceedings?
- Which law applies to the substance of the case? (→ private international law/conflict of laws)
- Can the judgment be recognised and enforced abroad?
- If a party becomes insolvent, where would insolvency proceedings take place?
- What happens if the parties entered into an arbitration agreement?



International civil procedure

- Rules on the enforcement of (private) law in cases with an international element
 - Special procedural rules for cases with international elements
 - Conflict of laws rules for procedural issues



Development of European civil procedure

- 1968 Brussels Convention
- 1988 Lugano Convention
- Maastricht treaty: judicial cooperation as part of the “third pillar”
- Treaty of Amsterdam: “communitarisation” of European civil procedure
- Brussels I Regulation and revised Lugano Convention of 2007



Status and development perspectives of EU civil procedure

- Brussels I *bis* Regulation (Regulation 1215/2012)
- Regulations on matters excluded from the Brussels I *bis* Regulation
- European Account Preservation Order
- Service Regulation and Evidence Regulation
- Regulations creating “European titles” (European Enforcement Order, European Order for Payment, European Small Claims Procedure)
- Draft Anti-SLAPP Directive
- Towards a European Code of Civil Procedure?
- Further integration of Switzerland into the European judicial area?



Content of the Lugano Convention

- (direct) jurisdiction in cross-border cases
- *lis pendens* and related proceedings
- recognition and enforcement of foreign judgments



Interpretation of the Lugano Convention

- Theoretical possibilities
 - autonomous interpretation
 - *lex causae* (law applicable to the subject matter of the dispute)
 - *lex fori* (law of the forum)



Interpretation of the Lugano Convention

- Primacy of autonomous interpretation
 - textual interpretation (can be problematic, see list of authentic languages in Annex VIII)
 - systematic interpretation
 - historical interpretation (use of travaux préparatoires) and its problems
 - **teleological interpretation**
 - comparative law approach
- Relevance of ECJ case law

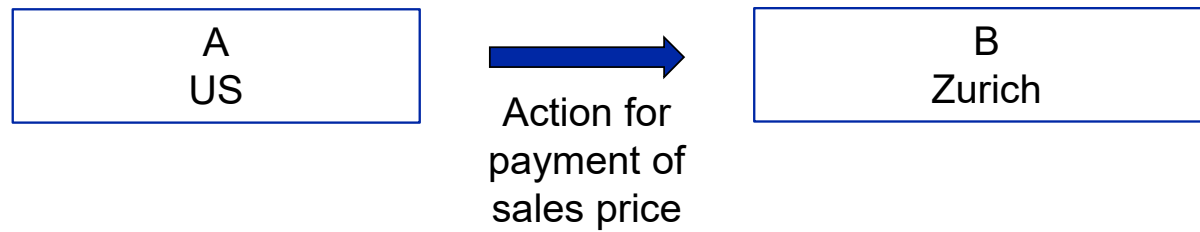


Scope of application of the LC

- Material scope
 - civil and commercial matters
 - autonomous concept
 - actions between a public authority and another person governed by private law can fall within the scope of the Convention
 - cases where a public authority acts in the exercise of its powers are excluded
 - necessity to examine the basis and the detailed rules governing the bringing of the action
- excluded matters (Article 1(II) LC)



Territorial/personal scope of application of the LC – Case 1



- *What are the relevant rules on international jurisdiction?*
- *What are the relevant rules on local jurisdiction?*



Territorial/personal scope of application of the LC – Case 1

- Material scope of the LC
 - civil or commercial matter (Article 1(1) LC)
 - no exclusion (Article 1(2) LC)
- Territorial/personal scope of the LC
 - Article 2(1) LC: defendant domiciled in Contracting State [CS] (Switzerland)
- Relevance of plaintiff's domicile in the US?
 - plaintiff's domicile not relevant unless specifically indicated
 - LC only applicable to cases with international element, but no connection with another CS required (ECJ *Owusu/Jackson*)
- **Result: international jurisdiction of Swiss courts under Article 2(1) LC**

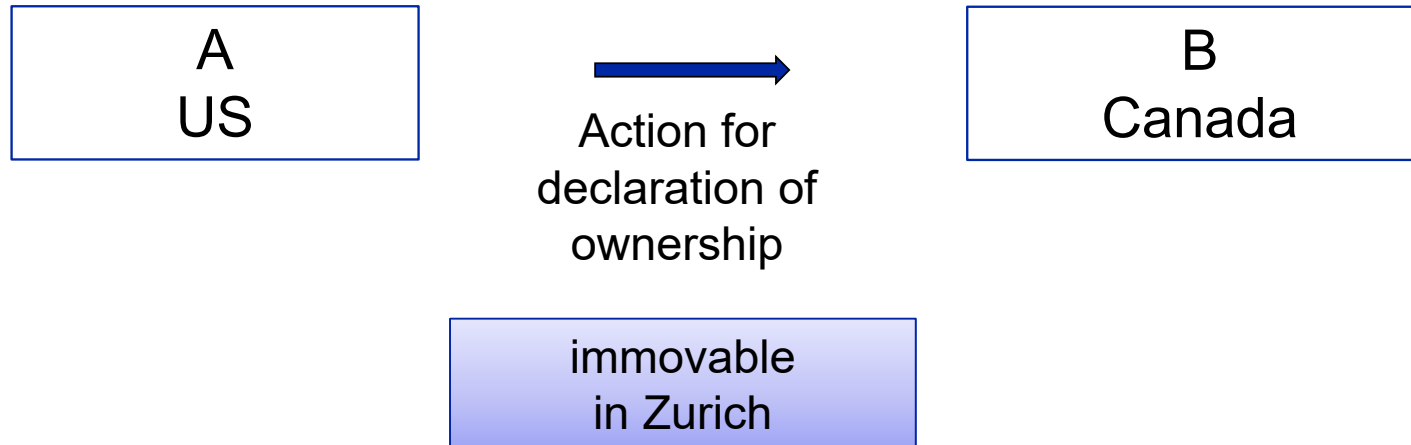


Territorial/personal scope of application of the LC – Case 1

- Article 2(1) LC: only international jurisdiction (“in the courts of that State”)
- local jurisdiction governed by the national law of the forum state
- Switzerland:
 - Private International Law Act (PILA) governs jurisdiction in cross-border cases
 - jurisdiction in purely internal cases governed by Swiss Code of Civil Procedure
- In the present case: Article 112(1) PILA (defendant’s domicile)
- **Result: local jurisdiction in Zurich under Article 112(1) PILA**



Territorial/personal scope of application of the LC – Case 2



Do the Zurich courts have international jurisdiction?



Territorial/personal scope of application of the LC – Case 2

- Material scope of the LC
 - civil or commercial matter, no exclusion from scope
- Territorial/personal scope of the LC
 - Article 22(1) LC: right *in rem* in immovable property situated in CS – LC applicable regardless of parties' domiciles
- International jurisdiction of Swiss courts under Article 22(1) LC
- Local jurisdiction: Article 97 PILA (courts for the place where the property is located)
- **Result: international and local jurisdiction in Zurich**