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Jurisdiction in Civil and Commercial Matters

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Brussels Ia Reg. 1215/2012 (ex. 44/2001)

Key Concepts

The EU private international law regime

- Jurisdiction
- Applicable Law
- Enforcement of Judgments
- Special Procedures – EOP, ESCP, Evidence, Service of Documents
- Certainty and predictability for parties involved
 - C-412/10 *Homawoo*, C-281/02 *Owusu*, C-185/07 *West Tankers*
- Mutual Trust between legal and judicial systems
 - C-116/02 *Gasser*, C-159/02 *Turner*, C-536/13 *Gazprom*

Brussels Ia – Reg. 1215/2012

Key rules to determine jurisdiction

- Exclusive jurisdiction – Article 24, 27, 28
- Appearance – Article 26
- Agreement – Article 25
- Insurance – Articles 10 – 16, Consumers – Articles 17 – 19
- Special jurisdiction – Articles 7 – 9
 - Tort/Delict, Contract
- General rules – Articles 4 - 6

Exclusive Jurisdiction

Articles 24

- Rights in rem or tenancies in immovable property
- Constitution, validity or nullity of company
- Entries in a public register
- Patents / IPRs / Trademark
- Enforcement of a judgment

Articles 27 & 28

- Rejection of jurisdiction where another court has exclusive jurisdiction

Appearance & Agreement

Articles 26 & 25

- Appearance – Article 26

...the court of a Member State before which a defendant enters an appearance shall have jurisdiction. ...

C-150/80 *Schuh v. Jacqmain*

Court must inform *special* parties of right to contest and of consequences.

- Agreement – Article 25

...For the next speaker!!

Insurance & Consumers

Articles 10 – 19

- Insurance – Articles 10 – 16
 - Insurer can be sued where he is domiciled, or where the policy holder, insured or beneficiary is domiciled
- Consumers – Articles 17 – 19
 - Consumer can sue where he is domiciled or where the other party is domiciled
 - Consumer can be sued only where he is domiciled

Consumer Contracts

Consumer Contracts contd.

- Who is a consumer?
 - “Private final consumer”
 - “For the purpose of satisfying an individual’s own need in terms of private consumption”
 - C-269/95 Benincasa, C-96/00 Gabriel, C-464/01 Grüber*
- Dual purpose contracts?
 - Not consumer contracts where a non-negligible part of the contract serves the professional need
 - C-464/01 Grüber*

Consumer Contracts

Consumer Contracts contd.

- Error by the professional?

Where the consumer has misled the professional about his nature then it will not be a consumer contract

"...for a purpose which can be regarded as being..."

C-464/01 Grüber

Consumer Contracts

Consumer Contracts – Territorial Aspect.

- Passive Consumers v. Active Consumers
- Targeted Activity + HR of Consumer = Consumer Contract
- Causal Link
- Active Consumers not afforded equal protections
- What about non-EU traders?

Consumer Contracts

Article 17(1)(c)

- Pursuing Activity
 - Physical presence such as an establishment, branch etc.
- Directing Activity
 - Where there is no branch
 - Very broad
 - Any kind of advertisement, publicity, offers
 - Any kind of medium: newspaper, tv, radio, internet etc.
 - C-585/08 & C-144/09 *Pammer & Alpenhof*

Special Jurisdiction

Contract – Art 7(1)

- The courts for the place of performance of the obligation in question
 - Obligation in question = the principal obligation
 - C-14/76 *De Bloos*, C-266/85 *Shenavai*
 - Place of performance for goods = place of delivery
 - Place of performance for services = place of provision of services

Special Jurisdiction

Tort / Delict – Art 7(3)

- The courts for the place where the harmful event occurred

C-21/76 Bier, C-68/93 Shevill, C-16/10 eDate

- “The courts for the place”

Note the reference to the internal jurisdiction rules of the forum. *i.e.* the *lex fori* has a partial role

General Rules

General Rules – Articles 4 - 6

- If domiciled in a Member State = must be sued there
- If not domiciled in a Member State = *lex domicilii*

Köszönöm!