



Case study on 'Applicable law to service contracts relating to holidays and torts'¹

Case scenario

2014 has been a terrible year for Mr. and Mrs. Schmidt, who live in Düsseldorf (Germany). Mr. Schmidt is working for a company that has decided to reduce costs, which is just a nice way of saying "work more for less", and Mrs. Schmidt has had to help her daughter Gudrun, who just got divorced, with the care of her sweet three children.

Now it is the Schmidt's turn! They are going to have a wonderful summer holiday in a nice hotel by the seaside in Marbella (Spain). They book plane tickets on the web page of Dylan-Air, a low cost company domiciled in La Valetta (Malta) that operates a direct flight between Düsseldorf and Malaga. They agree, by clicking the "I agree" button on the web, to a choice of law clause in favour of the law of Ruritania, a non-EU state that has outrageous rules that do not afford any protection to airline passengers (which they, of course, are not aware of). The Schmidts pay by credit card.

The Schmidts also manage to find a very nice hotel on the Internet. The hotel's website attracts their attention because it contains lots of information in German. Mr. and Mrs. Schmidt are convinced by the photos posted on the web and the description of the hotel's facilities contained therein. They also like the idea of getting "Kaffee und Kuchen" ("coffee and cake") at 3 p.m. They book the hotel online and pay with their credit card. The hotel is located in Marbella but owned by a company that has its place of central administration on the Isle of Man.

They are very much looking forward to a much needed ten days' rest!

But events unfold differently...

Their flight is cancelled and they are stranded at the airport. The French controllers are on strike again - at least that is what the low cost company says, although it looks like an excuse. They arrive in Malaga twelve hours later than scheduled, at three o'clock in the morning, without their luggage.

And the hotel is terrible: the room is much smaller than it appeared on the web, the air-conditioning does not work, "Kaffee und Kuchen" is not served punctually and they cannot sleep at night, because of these "lively" Spaniards sitting at the hotel bar under their window until three o'clock in the morning.

And on the very last day Mrs. Schmidt slips over in an oil puddle at the hotel entrance and breaks her wrist. The doctors and nurses at the Spanish hospital are very nice but still- once back at home she continues to suffer from a lot of pain; needs to undergo surgery and rehab and to hire a housekeeper (the only positive side is that she is not able to look after Gudrun's children).

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The Schmidts are not only disappointed but furious and take action:

a) They sue the low cost company for compensation for moral and material damage. Which is the law applying to this claim? Please consider as well whether the law applicable would change if Dylan-Air had its place of central administration in Ruritania.

b) They sue the hotel for reimbursement of the sum they had paid on the grounds that the description on the web did not correspond to the real conditions offered. Which is the law applying to this claim? Please examine alternatively which would be the applicable law if they had rented an apartment also located in Marbella owned by Mr. and Mrs. Müller, a German couple domiciled in Mannheim.

c) In the case at hand Mr. and Mrs. Schmidt book their flights and hotel rooms separately. Please examine which would be the applicable law if they had booked the flights from Düsseldorf to Malaga and return, and the hotel rooms from a tour operator called "Happy Holidays", a company with its place of central administration in Rotterdam (The Netherlands), and were to sue Happy Holidays for compensation because the transport and accommodation did not correspond to the conditions offered by the tour operator. Happy Holiday's website contains information in German and mentions a telephone number with the Dutch International prefix. It does as well contain reviews from lots of German customers praising the fact that all the hotels offered serve "Kaffee und Kuchen".

d) Mrs. Schmidt sues the hotel for compensation for the moral and material damage suffered as a consequence of the accident. Mrs. Schmidt puts forward that she broke her wrist and has had to undergo surgery and rehab in Germany and to hire a housekeeper since she was not able to pursue her daily activities for a period of six months. Which is the law applying to this claim? Please consider alternatively if the result would change in case Mrs. Schmidt had fallen on the street and were suing the municipality of Marbella. Consider as well whether the law applicable also applies to an issue such as expert evidence.