

**Legal English for Judicial
cooperation in civil and
commercial matters.**

**Regulation 1215/2012 on
jurisdiction and the
recognition and enforcement
of judgments (Brussels Ia)**

Eva Samaniego Fernández



Co-funded by the Justice Programme 2014-2020 of the European Union

1. General legal terms.

Choose the appropriate term below for the definitions.

TERMS

settlement	party	habitual residence	regulation
choice of court/forum selection	authentic instrument	leading question	hearing
draft	disposition	admission of debt	counterclaim
legal person	default	to have jurisdiction	action
pecuniary	bench trial	to fall due	hung jury
ADR (Alternative Dispute Resolution)	decision	conveyancing	dissenting opinion
transcript	trial court/court of record	expert opinion/evidence	injunction
to award	overturn	concurring opinion	breach of contract
legalisation	acknowledgement of receipt	irreconcilable	appeal
appearance	assignment	undertaking	damages

DEFINITIONS

1	Legal proceedings (civil or criminal).
2	Recognition by an addressee that a letter or notification has been received.
3	Drawing up a legal document to transfer the ownership of property from seller to buyer.
4	Where a judge disagrees with the majority opinion in a case.
5	Where a judge agrees with the majority opinion in a case.
6	The preliminary version of a legal document, such as a contract or an Act.
7	Where more than one court has the jurisdiction to hear a case and parties wish to select which one would be more favourable for their case.
8	To have the legal power to hear and decide a case.

9		Place (usually country) where a person habitually lives.
10		Person or group involved in a contract or in proceedings as a litigant.
11		A claim brought by a defendant in response to the claimant.
12		To decide (e.g. a court) that an amount must be paid to a party.
13		Evidence given by a witness who is a specialist in a certain subject.
14		When parties reach an agreement on the claim without pursuing the matter through a trial.
15		Document recording a legal act or fact whose authenticity is certified by a public authority.
16		Recognition by a party that an amount of money is owed.
17		Failure to carry out some or all of the terms of a contract.
18		In EU law, a legislative instrument that is binding in its entirety on all those to whom it is addressed. (Also: general term for a judgment).
19		Failure in duty or performance (i.e., to fulfil an obligation), e.g. “in _____ of appearance”.
20		To reach a date for payment.
21		Something for which a solution is not possible (e.g. “_____ differences”) or which cannot be made compatible (e.g. “_____ judgments”)
22		Court session in which oral arguments are heard and evidence is presented.
23		Authentication, e.g. of a document, so that it is acceptable by a body/institution/court...
24		Related to money (e.g. “_____ damages”, “non-_____ loss”).
25		In the EU, instrument of general scope that is binding in its entirety and directly applicable in all Member States.
26		Monetary compensation awarded by a court in a civil action to a party who has been injured through the wrongful conduct of another party.
27		Annul, lift, repeal, revoke, reverse (e.g. “_____ a judgment”).
28		An official or certified representation of what took place in a court during a trial or other legal proceeding.
29		A non-human entity that is treated as a person for limited legal purposes (also a single person having a separate personality before the law other than his own).

30		The submission to a court's jurisdiction; a lawyer declaring to the court that s/he represents a litigant in a case before the court (also referred to as "entering an _____").
31		A court order by which an individual is required to perform, or is restrained from performing, a particular act or course of conduct.
32		A court that hears and determines a case initially, as against an appellate court.
33		A method for resolving disputes other than by litigation.
34		To ask a higher court to reverse the decision of a trial court after judgment or other legal ruling.
35		A trial before a judge without a jury.
36		A jury that cannot reach a unanimous verdict.
37		A question put to a witness that suggests the answer the questioner wishes to obtain.
38		The transfer of a legal right by one legal or natural person to another.
39		The transfer of property by its owner.
40		(a) A promise to do or not to do a specified act. (b) A business.

2. Use of legal English

1. When you are representing a party in court you say that you are _____ a party.
2. When there's more than one judge sitting together they sit in _____.
3. When a judge sits by himself/herself, s/he sits _____.
4. When a case is heard with no public it is heard _____.
5. When a case is heard with public it is heard _____.
6. A lawyer who is active/working is called a _____ lawyer.
7. When a judge is dealing with a case he is _____ it.
8. A technical way of saying "intentionally" is: _____.
9. When a court supports the decision of a lower court: to _____.
10. Another way of saying "temporary measures" is _____ measures.
11. Some provisions may have the same *standing* as Acts, that is, they have _____ of law.
12. The necessary level of proof is called the _____ of proof.
13. When it is someone's responsibility to prove a case, it is called the _____ of proof.

3. Prepositions

Complete the phrases below using the correct preposition.

against, by, down, for, forth, from, into, to, on, out, through, under, up, upon, with

1. Members of official institutions must abide _____ the law in all circumstances
2. The defendant's lawyers carefully weighed _____ the submissions before answering.
3. Third parties are not eligible _____ that kind of compensation.
4. To sum _____, there were three very powerful reasons not to sign the contract.
5. The costs of litigation have been accounted _____ when calculating the final amount.
6. The parties _____ a contract must both sign it.
7. I think we can rule _____ any compensation at this stage of the proceedings.
8. We'll work _____ the sum right before the trial.
9. Counsel is subject _____ the requirements of the Civil Procedural Code.
10. The company was wound _____ last year due to persistent debt problems.
11. The defendant was served _____ the claim form.
12. Pursuant _____ the contract, the amount will be transferred next month.
13. His main concern was to protect the company _____ misappropriation.
14. The company's position is set _____ in paragraph 9 of the contract.
15. Parties have rights and obligations _____ a contract.
16. The company must set _____ very clear guidelines to deal _____ complaints.
17. The defendant submitted an application _____ the Court.
18. Defence lawyer skimmed _____ the witnesses' statements before going into court.
19. I think his company will benefit _____ the contract.

20. The lawyer's argument rested _____ a questionable interpretation of the Childcare Act 2016.
21. The trial judge ordered that the case be struck _____.
22. The figures of the financial report can be broken _____ as follows.
23. No rights are assigned _____ a third party under this contract.
24. The company agreed _____ the terms subject _____ certain conditions.
25. The claimant filed an application _____ an injunction.
26. The defendant was charged _____ murder.
27. Should there be a breach, we can always enforce the contract _____ the seller.
28. The legal team consists _____ three civil and two criminal lawyers.
29. The parent company will draw _____ its capital reserves to finance its new venture.
30. Negotiations between the parties have broken _____ .
31. The parties finally entered _____ the agreement after a long negotiation.
32. There is no third-party beneficiary _____ this contract.
33. The subsidiary company disposed _____ most of its assets because it had many debts.
34. Both parties are entitled _____ damages should there be breach of contract by either one.
35. The Chief Executive Officer pressed _____ a final agreement after the meeting.
36. The Regulation provides _____ different ways of transmitting and serving documents.
37. Unfortunately, the company has departed _____ generally accepted accounting principles.
38. Today the trial judge will hand _____ her judgment.
39. Any such questions might be objected _____ on the grounds that they are argumentative.
40. Your route of appeal depends on certain factors such as the court where the decision you wish to appeal _____ was made.

4. Latinisms

Give the Latin terms for the following definitions and then try to pronounce them in English.

1		Against a thing/property.
2		A pending suit or action.
3		From the beginning.
4		Acts and omissions in the exercise of State authority.
5		For a suit, for specific proceedings (e.g. “representative _____”).
6		For this purpose.
7		This in return for that (an advantage/favour given in return for something).
8		“Please execute”. “Declaration of enforceability” (when a national court verifies that a judgment issued by a foreign court may be executed).
9		The need for a forum (lit. <i>market</i>).
10		The law of the case (law governing the substance of the case).
11		By one of the parties. Based on one party’s request, without hearing from the other side.
12		Law of the court in which the action is brought.
13		At first sight, on the face of it.
14		When someone or a body does something of its own motion, by virtue of their status or position.
15		In the absence of.
16		Law of the country where the harmful event occurred (for non-contractual obligations).
17		Adjourned indefinitely.
18		The reason/rationale for the decision.
19		The thing speaks for itself.
20		As much as he deserves.

21		Per day.
22		For each person.
23		In the room.
24		From what comes before, before seeing the facts.
25		Elsewhere.
26		In the matter of
27		Bring forth/give me the body.
28		In the place of a parent.
29		In good faith
30		In fact.
31		By right, by law.
32		By a subsequent act.
33		In the original position.
34		Otherwise known as.
35		Among other things.
36		Way of doing something.
37		Changing what has to be changed. (with the necessary changes)
38		Passing comments, comments “by the way” in a judgment.
39		The other way round.
40		The current state of affairs.
41		By itself.
42		By the fact itself, by the very fact.

5. General civil law terms

Match each term with the appropriate definition.

- | | | |
|----|---|---|
| 1 | Statute of limitation | a. Proceedings brought by a defendant in response to the claimant's claim. |
| 2 | To strike out | b. To challenge, to oppose a claim. |
| 3 | Court costs/fees | c. Procedure whereby one party is required to inform the other of documents relevant to the claim. |
| 4 | Settlement | d. Cases concerning sums under a certain threshold. |
| 5 | Cross-examination | e. Circumstances that give a person the right to bring a lawsuit and to receive relief from a court. |
| 6 | Preponderance of the evidence/likelihood/balance of probabilities | f. One who claims or brings a claim; an applicant for justice. |
| 7 | Service | g. The person against whom an action is brought. |
| 8 | Preliminary/
temporary/
provisional/interim
injunction | h. In a general sense, a statement under oath, usually given out of court. |
| 9 | Expert opinion/evidence | i. Formal statements by the parties to an action setting forth their claims (or defences). |
| 10 | Claimant | j. The degree of proof required in most civil actions. |
| 11 | Counterclaim | k. Statutes prescribing the maximum period of time during which various types of civil actions (and criminal prosecutions) can be brought after the occurrence of the wrong or the offence. |
| 12 | Submission | l. An order for the termination of a civil action without a trial of its issues, or without further trial. |
| 13 | Deposition | m. An injunction granted prior to a full hearing on the merits and which is not permanent. |
| 14 | Disclosure | n. The expenses involved in litigating an action. |
| 15 | Perjury | o. In general, the means provided by the law to help one party because the other party has acted contrary to the rules of law. |
| 16 | Summons (<i>subpoena</i>) | p. A sworn written statement made by a witness. |

17	Cause of action	q. Questioning of a witness by a party that has not called the witness.
18	Pleadings (statement of claim)	r. Evidence given by a witness who is a specialist in a certain subject.
19	Title deeds	s. When the advocate questions his/her witness to support his client's version of events.
20	Strict liability	t. The party who is owed some money.
21	Defendant	u. Telling lies in court while under oath.
22	Small claims	v. The delivery of court documents.
23	Dismissal	w. Where parties avoid going to trial by reaching an agreement on the claim.
24	Examination-in-chief (direct examination)	x. To cancel an action, for example because the claim reveals no grounds.
25	Creditor	y. An argument pleaded before a court.
26	To contest	z. A court order requiring a witness to appear in court.
27	Witness statement (<i>affidavit</i>)	a bis. Responsibility for a wrong that is imposed without the claimant having to prove that the defendant was at fault (e.g. in product liability and defamation claims).
28	Legal remedy	b bis. The documents that prove a person's ownership of land.

6. Prefixes

Add prefixes (*dis-*, *im-*, *in-*, *ir-*, *il-*, *ab-*, *un-*, etc.) to each of these words to form their opposites (antonyms).

1. Agree
2. Licit
3. Dependent
4. Valid
5. Respective
6. Practicable
7. Legal
8. Fair
9. Normal
10. Written
11. Limited
12. Justice
13. Restricted
14. Direct
15. Formal
16. Comparable
17. Lawful
18. Constitutional
19. Likely
20. Reconcilable
21. Competent
22. Sufficiently
23. Reliability
24. Authorised
25. Effectiveness

7. Plain English

Replace the following with equivalents that are shorter and simpler:

1. by the introduction of:
2. for the allocation of:
3. of the provision of:
4. submit an application for:
5. carry out an evaluation of:
6. implement an investigation of:
7. conduct a review of:
8. perform an assessment:
9. effect a renewal of:
10. in view of the fact that:
11. with respect to:
12. a certain number of:
13. the majority of:
14. within the framework of:
15. for the purpose of:
16. in the event of:
17. if this is not the case:
18. if this is the case:
19. with reference/regard to:
20. in accordance with:

8. Compound adverbial-prepositional phrases

Use compound adverbial-prepositional phrases to fill in the gaps, using the explanation given in brackets.

whereat, hereafter, hereinafter, thereupon, whereof, thereafter, heretofore, thereof, whereabouts, hereinabove, therein, herewith, hereunder, wherefore, thereby, herein, hereto, whereby, thereto, hereby, whereupon

1. The questions raised in point 27 _____ have to be taken into consideration.

(PREVIOUSLY IN THIS DOCUMENT)

2. All procedural documents, as well as any other correspondence sent to the Board, must be lodged at the Registry of the Board (_____ "the Registry").

(LATER REFERRED TO IN THIS DOCUMENT)

3. Accordingly, by the present Communication the Commission formally informs the Council of its intention to adopt the measures presented in the Annex _____.

(TO THIS DOCUMENT, OR MATTER, OR PLACE)

4. The practice of holding national seminars open to all actors has _____ been seen only as part of the process of putting together national plans.

(BEFORE NOW, SO FAR, UP TO NOW)

5. Where a national accreditation body does not meet the requirements of this Regulation or fails to fulfil its obligations _____, the Member State concerned shall take appropriate corrective action.

(LATER REFERRED TO IN THIS DOCUMENT)

6. The six remaining approved evaluation reports are presented _____.

(WITH THIS DOCUMENT; ATTACHED)

7. The seller tried to charge extra interest, _____ the buyer objected.

(AT WHICH)

8. This article also contains the process _____ inspections supervised by the Commission are put in place to check the effectiveness of these measures.

(BY WHICH)

9. The current tobacco premium system will no longer exist as from 1 January 2006, _____ it is necessary to establish, as a transitional measure, a new basis for calculating the future quota buy-back price.

(AS A RESULT OF WHICH)

10. In witness _____ the undersigned, being duly authorised thereto, have signed this Protocol.

(OF WHAT/OF WHICH)

11. Private citizens may hand in unlicensed firearms to police authorities, _____ possible charges for illegal possession may be dropped.

(IMMEDIATELY AFTER WHICH)

12. The number of district courts is _____ reduced from 82 small local courts to 24 larger district courts.

(FROM NOW ON)

13. The parties _____ agree that, in the event of dispute, jurisdiction shall remain with the courts of Portugal.

(BY THIS MEANS, BY THIS DOCUMENT)

14. All other products mentioned _____ may be trademarks of their respective companies.

(IN THIS DOCUMENT, MENTIONED HERE)

15. This lease will be valid from one year from this date and will be renewed yearly _____.

(AFTER THAT TIME, IN THE FUTURE)

16. Corruption was found to scare away investment, _____ lowering economic growth.

(AS A RESULT OF THAT)

17. Copies or reproductions to be discarded shall be destroyed to avoid access to the information contained _____ or its later recovery.

(IN THAT PLACE OR DOCUMENT)

18. Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions _____.

(OF WHAT HAS BEEN MENTIONED JUST NOW)

19. Legislative guides for the implementation of the United Nations Convention against transnational organized crime and the protocol _____ must be followed.

(ATTACHED TO IT/TO THAT DOCUMENT)

20. (...) it is _____ ordered and adjudged that payment be made to the claimant.

(DIRECTLY FOLLOWING THAT; CONCERNING THAT MATTER)

21. There is information about the _____ of those fugitives, but there is still little progress in arresting them.

(PLACE WHERE SOMEONE OR SOMETHING IS)

9. Law of delict¹: vocabulary

Match the terms with the definitions.

1	Invasion of privacy	a. Where one person is held responsible for the wrongdoing of another person (e.g. an employer is held liable for the delicts/torts of an employee that were committed in the course of his employment).
2	Abuse of process	b. A private or civil wrong, resulting from a breach of a legal duty.
3	Remedy	c. A sum of money awarded by the court as compensation to the claimant for the wrong suffered.
4	Relief	d. A duty binding on one party to avoid acts or omissions which would be likely to injure another party.
5	Wrong	e. The manner in which a right is satisfied by a court when some harm or injury, recognised by society as a wrongful act, is inflicted upon an individual.
6	Fraud	f. Where the claimant's reputation has been damaged publicly.
7	Account of profit(s)	g. Careless conduct that results in damage to another.
8	Breach of duty	h. The specified procedural period of time to do things.
9	Trespass (to land)	i. A form of defamation, where the defamatory statements are in writing.
10	Damages	j. When an individual intentionally enters the land of another without lawful excuse.
11	Libel	k. The unlawful intrusion into the personal life of another person without just cause.
12	Vicarious liability	l. A malicious and deliberate misuse of regularly issued court process not justified by the underlying legal action.
13	Delict/tort	m. A type of delict/tort that involves misuse of the public right of access to the courts by: (1) intentionally (and maliciously) instituting and pursuing (or causing to be instituted or pursued) a legal action that is (2) brought without probable cause and (3) dismissed in favour of the victim of the malicious prosecution.
14	Defamation	n. A deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right, owing to which the party suffers a damage.
15	Time limits	o. Failure to satisfy ethical, legal or moral obligation, especially when someone has the right to demand that satisfaction.
16	Injunction	q. A person or thing causing inconvenience or annoyance.

¹ "Delict" is the preferred term in civil law systems. "Tort" is used in common law systems.

17	Specific performance	r. When a person is legally responsible for the damage and loss caused by his/her acts and omissions regardless of culpability and with no requirement to prove fault, negligence or intention.
18	Malicious use of process	s. When each party is independently liable for the full extent of the injuries arising from the wrongful act.
19	Duty of care	t. The redress, or benefit, given by a court to an individual who brings a legal action, for example an exemption from a tax or the return of property wrongfully taken by another, or enforcement of a contract.
20	Negligence	u. An action taken against a defendant to recover the profits taken as a result of the breach of duty, in order to prevent unjust enrichment.
21	Strict liability	w. Order of a court which requires a party to perform a specific act, usually what is stated in a contract.
22	Nuisance	x. Court order, usually issued to the defendant, to do or refrain from doing something.
23	Joint and several liability	y. A right of someone to recover from a third party the whole amount which he himself is liable to pay.
24	Indemnity	z. Activity that transgresses moral or civil law, for example _____ doing.

10. Contract law terminology

(a) Give the terms for the following definitions. You have a clue for each of them.

1	D _ _ _ _ _	Unlawful pressure exerted upon a person to coerce him/her into performing an act that he or she ordinarily would not perform (for instance, entering into a contract).
2	_ _ _ _ _ ity	When a person is legally able to enter into a contract and be bound by its terms.
3	C _ _ _ _ _	An agreement between parties which is legally enforceable.
4	To _ _ _ _ _ aside	To decide that something will not have legal effect; to cancel or to make void.
5	_ _ _ _ _ factor	Clause, provision or term that makes a contract be voidable or void in part or in full.
6	C _ _ _ _ _ tion	An act or promise by one party to a contract that constitutes the price for which the promise of the other party is bought.
7	V _ _ _ _ _ contract	A contract with legal effect and force but which is liable to be unenforceable, rescinded or set aside.
8	Un _ _ _ _ in _ _ _ _ e	When a contract has been entered into as the result of improper pressure.
9	T _ _ _ _ _	When a contract is brought to an end either by breach, impossibility of performance, or some other reason.
10	R _ _ _ _ _	When a voidable contract is set aside as a result of some legal defect, fraud, etc.
11	Sp _ _ _ _ _ c p _ _ _ _ _	A court order to make someone carry out his/her obligations under a contract.
12	Notice of _ _ _ _ _	Written notice to a party that he/she is in breach of contract.
13	Quant _ _ _ _ _ _ uit	Latinism meaning "for as much as he deserves".
14	_ _ _ _ _ damages	Where the parties themselves have determined the level of damages.
15	E _ _ _ _ _ clause	Provision in a contract under which one party's liability in the event of failure is excused or excluded.
16	F _ _ _ _ m _ _ _ _	French expression to refer to events outside the control of the parties which prevent one or both of them from fulfilling their obligations under the contract and for which they cannot be held liable, for instance in the case of extraordinary events (a war, strike, riot, etc.), or an event described by the legal term "act of God" (earthquakes, floods, hurricanes, volcanic eruptions, etc.).
17	_ _ _ _ _ arge	To free from the obligations under a contract (e.g. by performance, by agreement, etc.).
18	A _ _ _ _ _	Proportionate reduction in the payment of debts that takes place when assets are insufficient to settle with creditors in full.

19	A _____ of p _____ it(s)	A gain-based remedy for money received where one person/entity has profited from a wrong at the expense of another; a sum equal to the amount the defendant has made through wronging the claimant. A litigant can claim it as an alternative to damages in certain circumstances (e.g. copyright infringement).
20	_____ ars	A sum of money that has not been paid or has only been paid in part at the time it is due; it is an accumulation of financial liabilities that have not been settled by their due dates (e.g. rent _____).
21	_____ or	One to whom a debt is owed.
22	_____ or	One who owes a debt.
23	P _____ sion	A term or clause in a contract.

(b) Now fill in the gaps in the following sentences with the correct form of the missing terms, using the clue provided in brackets.

1. This agreement is _____ (*constituted*) this 3rd of January 2011, by and between David Jones and Mary Davis.
2. The parties decided to go ahead with the contract _____ (*despite, in spite of*) the buyer's financial problems.
3. Now, therefore, in consideration of the mutual agreements and covenants herein _____ (*incorporated*), the parties hereto _____ (*concur, consent*) as follows.
4. The proper _____ (*interpretation*) of clause 3 appears to show that the seller has certain liabilities.
5. The term of this Agreement shall _____ (*begin*) on 5th of May 2010 and shall _____ (*remain*) in full force and effect until _____ (*finished*) by either party upon at least ninety (90) days.
6. This Agreement shall be construed and _____ (*executed, put into effect*) in accordance with the laws of Spain.
7. No clause shall be enforceable unless both parties have given their _____ (*compliance, agreement*) in writing.
8. IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above _____ (*stated, indicated*).
9. Breach of a _____ (*relevant, essential, important*) term of the contract shall give the other party the right to rescind it.
10. The _____ (*agreements*) under this lease agreement are to be enforceable.
11. The company had to _____ _____ (*sell or transfer property*) some of its assets in order to pay some debts.

12. Both parties shall be _____ (*release from an obligation*) from all liability once the terms of the contract have been complied with.
13. The creditor's _____ (*refraining from enforcing a debt*) in extending credit to the debtor meant that the company was able to continue in business.
14. _____ (*return or payment of property offered as security for a debt*) of the mortgage will take place when the last instalment has been paid.
15. The buyer's company has _____ (*fail to fulfil its obligation*) on its repayment schedule.
16. The seller has acted to his _____ (*harm, damage*) in agreeing to a change in the original contract.
17. Clause no. 12 is _____ (*not legally enforceable or binding*).
18. In spite of the efforts by one of the parties, the contract was declared _____ and _____ (*invalid, not having legal force*).
19. The contract _____ (*specify, require, demand*) that all payments must be made before the end of the financial year.
20. This new agreement _____ (*takes the place of, overrides*) all previous arrangements between the parties.

(c) Explain in your own words the meaning of the following rules for the interpretation of a contract:

1. Contra proferentem rule:
2. Noscitur a sociis rule:
3. Ejusdem generis rule:
4. Expressio unis est exclusio alterius rule:

Now interpret the meaning of the following, using the rules above:

EJUSDEM GENERIS

1. "Cats, dogs and other animals". How do you interpret "other animals"?
2. "Automobiles, trucks, tractors, motorcycles and other motor vehicles". How do you interpret "vehicles"?

EXPRESIO UNIS EST EXCLUSIO ALTERIUS

3. "Weekends and public holidays". What does it exclude?
4. "Do not remove chairs from the library". Does it allow for the removal of books?

(d) “Damages”. Fill in the gaps with the correct word.

1. Compensation should be full and should cover all damages _____.
2. He decided to _____ the company for damages.
3. If goods are lost in transit, the carrier will be _____ for damages.
4. Directive 2014/104/EU of 26 November 2014 on certain rules governing actions _____ damages under national law for infringements of the competition law provisions of the Member States.

(e) Types of contract clauses.

[Sources: <https://www.translegal.com/lesson/6865-2>; <http://www.legalmatch.com/law-library/article/common-clauses-in-a-contract.html>]

1. A(n) _____ clause is a clause prohibiting or permitting a complete transfer of rights under the contract to another party.
2. A(n) _____ clause is a clause in which certain information is labelled private and prohibited from being disclosed or distributed to anyone.
3. A(n) _____ clause is designed to protect against failures to perform contractual obligations caused by unavoidable events beyond a party’s control, such as natural disasters.
4. A(n) _____ of _____ clause is where the parties agree that the contract terms will only be interpreted according to the laws of a specific state and/or that litigation will only occur in a specified jurisdiction.
5. A(n) _____ of _____ clause states the time frame in which a lawsuit can be filed after a breach of contract or other violation.
6. A(n) _____ clause: These agreements release the other party from liability in the event that losses or expenses are incurred.
7. A(n) _____ clause ensures that the remainder of the contract is enforceable even if one part of the contract is determined to be invalid.
8. A(n) _____ clause is a clause that states that any legal disputes are to be resolved through arbitration rather than litigation.
9. A(n) _____ allows the non-breaching party to recover damages in the event that actual damages are difficult to calculate.

10. A(n) _____ clause sets forth when, and under which circumstances, the contract may be ended.

(f) Provide antonyms for the following adjectives:

1. Enforceable / _____ contract

2. Implied / _____ contract

3. Binding / _____ contract

4. Valid / _____ contract

5. Exclusive / _____ contract

6. Implicit / _____ contract

7. Public / _____ contract

8. Complete / _____ contract

9. Initial / _____ contract

10. Formal / _____ contract

11. Confusing terms

[Source: adapted from R. Haigh, *Legal English*.2012]

Read the explanations about the differences between the following terms and fill in the gaps.

(a) Assign and transfer: an *assignment* is the transfer of a right, title, task, duty or interest (i.e., something intangible) under an agreement. *Transfer* refers to tangible property, such as land, or to the sale of assets of a company. According to other sources (<http://www.buray.net/2012/08/differencebetweentransferassignment.html>), although ‘transfer’ is a common word for passing anything from one to another, it is frequently used for liabilities only (debts, outstanding amounts, obligations, fines etc.), while ‘assignment’ would be used for assets (interest, titles, benefits etc.).

1. An _____ is the transfer of a property right or interest under an agreement to some particular person.
2. Property of any kind may be _____, except as otherwise provided by this Act or by any other law for the time being in force.

(b) Breach, infringement and violation: *breach* is used for duties, contractual relations, obligations or security, while *infringement* is used in relation to the violation of rights (particularly intellectual property rights such as patents, trademarks or copyrights). *Violation* is used both for law and rights (particularly human rights) as well as for contracts.

1. In the eyes of the law, a party's failure to fulfill an end of the bargain under a contract is known as a _____ of the contract.
2. Intellectual property rights allow artists to protect themselves from _____, or the unauthorized use and misuse of their creations.
3. The Human Rights Council may request that the Security Council take action when human rights _____ occur.
4. A _____ by a trustee of a duty the trustee owes to a beneficiary is a _____ of trust.
5. The U.S. Congress has continually expanded and strengthened criminal laws for _____ of intellectual property rights.
6. Copyright _____ occurs when a third party uses copyrighted material in such a way that it violates the right to perform, publicly display,

distribute, reproduce and adapt a copyrighted work, without the permission of the copyright holder.

(c) Clause, provision, condition, term and article: *clause* is a self-contained concept within a contract; ideally it can be read and acted on on its own. A *provision* is any condition or stipulation of things to be done or not be done within the contract (it may correspond with a clause or be contained in a subclause). Verbal contracts have provisions, not clauses. A *condition* is a set of circumstances that must arise before another action can occur, for example, there may be conditions that must be satisfied before payment is made. A *term* is a provision in the contract for which one of the possible remedies for breach is termination of the contract by the innocent party. *Article* is more often used in legislation, particularly EU legislation.

1. Specific rules can be complementary but should derogate from the corresponding _____ in this Regulation only where such derogation is specifically provided for in this Regulation.
2. Each _____ in a contract addresses a specific aspect related to the overall subject matter of the agreement.
3. Hearsay evidence is admissible in criminal proceedings only if the 2003 Act or any other statutory _____ makes it admissible.
4. _____ 7 of the European Convention on Human Rights states that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.
5. _____ and conditions for copying, distribution and modification and included on this webpage.
6. Contracts will typically include a _____ requiring the parties to protect each other's confidential information.
7. Parties to a contract are bound only by its _____, not by other statements.
8. Contract _____ and _____ must be available in the language of the consumer.

(d) Agreement and contract: An *agreement* is any understanding or arrangement between two or more parties. A *contract* is a legally binding and enforceable agreement

which must contain several elements (offer and acceptance, mutual consent, consideration, etc.). Every contract is an agreement but every agreement need not be a contract.

1. Your access to this web site signifies your consent to and _____ with the terms contained herein.
2. These obligations and restrictions of confidentiality shall be effective during the term of the _____, including any extension thereof, and, unless otherwise provided, shall remain effective.

(e) Obligation, responsibility, accountability, liability: *obligation* is used to refer to a specific duty under a contract or legal provision. *Responsibility* is used to refer to the fact that someone has the duty to do whatever it takes to complete a task. *Accountability* is when a person is expected to take ownership of his or her actions or decisions, so he or she is answerable, i.e. is supposed to explain the outcomes of his or her actions, decisions, and omissions; it flows from bottom to top (from a subordinate to a senior). *Liability* generally refers to legal consequences, so for example breaching an obligation may lead to legal liability.

1. The adoption of this provision is in fulfillment of a(n) _____ derived from a convention concerning the penalization of acts of torture.
2. No patent _____ is assumed, however, with respect to the use of the information contained herein.

(f) Undertaking and assurance: *undertaking* is used to refer to a commitment to do something and to accept the legal consequences of doing so. *Assurance* refers to a collateral promise given by a third party.

1. The complete elimination of nuclear weapons and the _____ that they will never be produced again therefore remains the only guarantee against their use.
2. At the same time, we acknowledge that, given the interests involved, controlling and regulating weapons is a very complex _____.

(g) Void, invalid and ineffective: *void* and *invalid* mean that something is not legally binding and has no legal effect, while *ineffective* refers to something which fails to achieve the required legal aim.

1. Either way, measures were needed to implement anti-fraud mechanisms that were _____.
2. It is clear that any provisions of a contract or agreement that are contrary to the principle of equality of treatment must be rendered null and _____.
3. Situations could conceivably arise in which the acceptance of a reservation would be _____, but that would not necessarily always be the case.

12. Fill in the blanks with the appropriate term. There is a clue for you in brackets.

[Adapted from eHow, Contract Termination Terms: http://www.ehow.com/list_6751730_contract-termination-terms.html#ixzz1Dw059crq]

There are specific legal terms used to define the termination of a contract. Generally, a contract will terminate if it is completed as directed. However, in some circumstances a contract may be **(a)** _____ (*too early*) terminated. Such termination can be proper or improper. If a contract is terminated improperly and unfairly, at least one party to the contract may **(b)** _____ (*qualify for*) to damages.

(c) _____ (*revoke, annul*) a Contract.

If one or both of the **(d)** _____ (*sides*) to a contract rescinds that contract, the contract is terminated. For rescission to be **(e)** _____ (*allowed*), both parties must be able to return to the same position they were in before the contract was signed, as though it never existed. If either party has started to **(f)** _____ (*carry out*) its duties under the contract, neither party has the right to rescind the contract.

One party may also **(g)** _____ (*independently, on its own*) rescind a contract if he or she **(h)** _____ (*didn't have*) the capacity to sign the contract. For example, a person suffering from a mental defect lacks the necessary competence to **(i)** _____ (*sign*) into a contract. **(j)** _____ -- children under the age of 18-- also lack the capacity to sign contracts. While those parties are able to **(k)** _____ (*discharge, execute*) the contract if they choose, they also have the legal right of rescission and may cancel the contract before either party has performed.

13. Fill in the blanks with the appropriate form of the word in brackets.

[Adapted from eHow, Contract Termination Terms: http://www.ehow.com/list_6751730_contract-termination-terms.html#ixzz1Dw059crq]

When **(a)** _____ (*perform*) is impossible.

In **(b)** _____ (*contract*) terms, performance is a party's legal **(c)** _____ (*oblige*) to undertake the duties set forth in the contract. A contract will terminate when both **(d)** _____ (*party*) complete their performance. However, there are some **(e)** _____ (*occasionally*) when performance is made **(f)** _____ (*impossibility*). Contract law allows parties to terminate a contract when such **(g)** _____ (*not foresee*) circumstances arise. For example, a person could **(h)** _____ (*entrance*) into a contract with a famous composer and **(i)** _____ (*agreement*) to pay \$5,000 in exchange for the composer writing a song. If that composer dies before writing the song, the contract is **(j)** _____ (*termination*). Because an original song written by a famous composer is a one-of-a-kind item, impossible performance arises when the composer dies.

A breach of contract occurs when: (1) one party **(k)** _____ (*violation*) the terms of the contract, (2) one party **(l)** _____ (*failure*) to perform his required obligation or (3) prevents the other party from properly performing. In order to avoid dissatisfied customers **(m)** _____ (*claim*) breach of contract when they do not like the other party's work, "**(n)** _____ (*substance*) performance" limits a party's right to **(o)** _____ (*recovery*) damages for breach. For example, if a person hires someone to paint his house and is unhappy with the shade of paint after it dries, the painter has "substantially performed" and cannot be subject to a breach of contract lawsuit. However, when a breach of contract lawsuit is appropriate, damages can be **(p)** _____ (*award*) in several ways. Some contracts include a "**(q)** _____ (*liquid*) damages" clause, setting the **(r)** _____ (*money*) amount to be paid by the **(s)** _____ (*breach*) party to the other.

14. Company law terminology

Give the terms for the following definitions.

1	W_____ing-up (liquidation)	Winding up is the process of dissolving a business by selling all the assets of a business, paying off creditors and distributing any remaining assets to the partners or shareholders.
2	A_____	An insolvency practitioner who is appointed to try and save a company from being wound up.
3	Annual a_____/report	A yearly (sometimes published) record of the company's operations and financial situation that is produced each year.
4	Annual G_____ M_____(AGM)	An annual meeting of the general membership of an organization, in the case of a company, shareholders.
5	L_____ capital	The part of a company's capital employed that is not equity capital, that earns a fixed rate of interest instead of dividends, and which must be repaid within a specified period, irrespective of the company's financial position.
6	M_____ shareholder	A person or entity who owns sufficient shares in a company to influence the decision-taking.
7	Independent a_____or	A member of a recognized body or regulatory authority of accounting and auditing (for example, a CPA or certified public accountant; a CA or chartered accountant) who examines the financial records, business transactions and annual accounts of a company.
8	___bs____y	A daughter company that is owned or controlled by another company, which is called the parent company.
9	A_____s	An item of economic value that is expected to yield a benefit to the owning entity in future periods.
10	A_____les of ass_____ion (UK)/in_____ion (USA)	A document that specifies the regulations for a company's operations, defines the company's purpose and lays out how tasks are to be accomplished.
11	_____ity	A company's legal debts or obligations that arise during the course of business operations; a sum of money owed, a debt (e.g. the assets and _____ of the company).
12	_____ capital	The amount of money invested by the company's owners in exchange for shares of ownership.
13	_____holder (UK)/_____holder (USA)	Any person, company or other institution that owns at least one share of a company's stock.
14	O_____ resolution	A decision passed by the shareholders of a company by a simple or bare majority.
15	S_____t_____er	A form of business in which one person owns all the assets of the business, in contrast to a partnership or a corporation.
16	_____ship	The relationship between persons carrying on a business in common with a view to profit.

17	_____ course of business	The usual type of business conducted by the firm.
18	Inc_____tion	Method by which individuals are voluntarily united into a new entity through the creation of an artificial, intangible, and legal person.
19	M_____ director/Ch_____ Ex_____ve Off_ er	A director in charge of the management of a company.
20	I_____ent company	When a company is unable to meet debts or discharge liabilities.
21	J_____and s_____liability	When partners may be collectively and individually liable.
22	Li_____	Person appointed to supervise the winding up of a company.
23	_____end	A share of the after-tax profit of a company, distributed to its shareholders according to the number and class of shares held by them.
24	_____cy	Legal procedure for liquidating a business (or property owned by an individual) which cannot fully pay its debts out of its current assets.
25	B_____of _____ors	A group of individuals legally responsible to govern a company and responsible to the shareholders and other relevant stakeholders.
26	B_____d	A debt investment in which an investor loans money to an entity (typically corporate or governmental) which borrows the funds for a defined period of time at a variable or fixed interest rate.
27	C_____l	The net worth of a company: money, property and any other assets.
28	D_____ure	Long-term debt instrument that is not secured by a mortgage or other lien on specific property. Because it is unsecured debt, it is issued usually by large, financially strong companies with excellent bond ratings.
29	S_____ties	Stocks, shares, debentures, bonds or any other rights to receive dividends or interest.

15. Council Regulation 1215/2012 (Brussels Ia): most frequent terms

administration of justice application of bilateral convention arbitral award arbitration agreement area of freedom
authentic instrument cause of action choice-of- court choice-of-court agreement circulation of
judgment civil and commercial matter civil claim civil matter civil or commercial matter close connection
commercial matter common rule competent authority competent enforcement authority concern matter concurrent
proceeding court of origin court settlement cultural object date of entry declaration of
enforceability declaration of enforceability be default of appearance defendant be employment contract
enforcement of judgment enforcement proceeding equivalent document equivalent effect
exclusive choice-of-court exclusive choice-of-court agreement exclusive jurisdiction first enforcement
measure first subparagraph free circulation free circulation of judgment general lis pendens rule ground of
jurisdiction harmful event immovable property incidental question individual contract of employment
injured party insurance contract interested party internal law irreconcilable judgment judicial cooperation I o legal
person legislative act lis pendens maintenance obligation national law national rule natural or legal person
natural person O N official language operation of ship ordinary appeal ordre public original claim particular matter place of
performance postal address proper administration of justice protective measure public policy purpose of enforcement
reasonable time refusal of enforcement refusal of recognition related action respect of liability insurance
risk of irreconcilable judgment rule of jurisdiction rule of private international law s e sale of good

(a) Pronounce the following terms from Regulation 1215/2012 (*British English pronunciation*):

1. incorporation
2. employee
3. domicile
4. proceedings
5. court
6. regulation
7. policyholder
8. formality
9. defendant
10. insured
11. refusal
12. legalisation
13. instrument
14. convention
15. matter
16. prejudice
17. arbitration
18. beneficiary
19. institute
20. section

21. contract
22. provision
23. sue
24. law
25. certificate
26. to contest
27. notify
28. action
29. obligation
30. situate
31. dispute
32. appeal
33. tribunal
34. authenticity
35. applicant
36. liability
37. proportionality
38. provisional
39. protective
40. supersede
41. evidence
42. seek
43. claimant
44. order
45. property
46. litigation
47. substance
48. commerce
49. appearance
50. territory
51. consumer

(b) Pronounce the following word combinations from Regulation 1215/2012 (British English pronunciation):

1. direct enforcement
2. insurance contract
3. effect service

4. separate proceedings
5. of its own motion
6. habitually resident
7. date of receipt
8. alternative grounds of jurisdiction
9. exercise jurisdiction
10. proposal for amendment
11. debtor protection rule
12. sufficient time
13. commence proceedings
14. beneficiary of an insurance contract
15. judgment
16. to summon to appear
17. proof of service
18. official language
19. to issue a certificate
20. to contest enforcement
21. contrary to public policy
22. to dismiss the proceedings
23. recoverable costs
24. calculation of interest
25. to challenge a judgment
26. cause of action
27. to discontinue proceedings
28. judgment capable of recognition
29. to serve a document
30. to stay proceedings
31. at first instance
32. to lodge a document
33. declaration of enforceability
34. to decline jurisdiction
35. in default of appearance
36. enforcement of judgment
37. authentic instrument
38. exclusive jurisdiction
39. refusal of enforcement
40. refusal of recognition

41. incidental question
42. Member State
43. outcome of proceedings
44. to seek enforcement
45. to suspend the proceedings
46. to join proceedings
47. principal place of business
48. court settlement
49. immovable property
50. legal person
51. protective measure
52. provisional measure
53. substance of a matter
54. irreconcilable judgment
55. original claim
56. injured party
57. finding of fact
58. to lodge an appeal
59. to contest an appeal
60. ordinary appeal
61. enforceable obligation
62. arbitration agreement
63. choice of court agreement
64. competent enforcement authority
65. cause of action
66. maintenance obligation
67. reasonable time

16. Listening activity.

(a) Listen to this judgment and fill in the gaps.

In the matter of “The Alexandros T” [2013] UKSC 70

On appeal from [2012] EWCA Civ 1714

- 1 In the matter of “The Alexandros T”
2 Lord Clarke will explain the (1) _____ of the court.
3 On the 3rd of May 2006 the vessel Alexandros T sank and became a total loss about 300 miles south of
4 Port Elisabeth. Her owners, Starlight, made a claim against their insurers, who denied liability on the basis
5 that the vessel was (2) _____ with the privity of the owners. In response, Starlight
6 made a number of serious allegations against their insurers, including allegations of (3)
7 _____ involving (4) _____ and
8 bribing witnesses.
9 In August 2006 Starlight (5) _____ proceedings in the Commercial Court against
10 various insurers known as the CMI and the LMI. Those proceedings were (6)
11 _____ on the basis that the insurers would pay a hundred percent of what was due
12 under the policies, but without interest or costs.
13 The proceedings were then (7) _____ by what is called a Tomlin Order. In April
14 2011 nine sets of Greek proceedings in materially identical form were issued by Starlight making
15 essentially the same allegations of fact as they had been making in England although they were expressed
16 as (8) _____ in Greece. The insurers thereafter
17 (9) _____ to enforce the earlier settlement agreements in the 2006 and later 2011
18 proceedings in England.
19 Starlight applied for a stay of these proceedings, firstly (10) _____ to Article 28
20 then pursuant to Article 27 of the Brussels Regulation. The judge refused to exercise his (11)
21 _____ to grant the stay under Article 28 and gave summary judgment for the
22 insurers.
23 The Court of Appeal held that it was (12) _____ to stay the 2006 proceedings
24 under Article 27, which provides for a (13) _____ stay, and that it was not
25 therefore necessary to reach a final determination of the position under Article 28.
26 Before the Supreme Court, the insurers challenge the (14) _____ of the Court of
27 Appeal’s conclusion under Article 27 and submit that the judge was correct to refuse a stay under article
28 28. Starlight cross-appeal on the Article 28 point. Subject to the possibility of a reference to the CJEU on
29 a limited question or questions, the Supreme Court (15) _____ allows the insurers’
30 appeal.
31 I give the (16) _____, with which Lord Sumption
32 and Lord Hughes agree. Lord Neuberger also agrees, adding a short judgment of his own. Lord Mance
33 agrees in the (17) _____ but not with all of the reasoning.
34 Very shortly the reasons are these.
35 Article 27 must be (18) _____ in its context. The purpose of Article 27 is to
36 prevent the courts of two member states from giving inconsistent judgments and to (19)
37 _____ so far as possible the non-recognition of a judgment on the ground that it is
38 (20) _____ with the judgment given by the court of another Member State.
39 In each set of proceedings the question under Article 27 is whether they involve the same (21)
40 _____ of (22) _____. The CJEU has held that it is

41 necessary to consider whether each claim has *la même objet et la même cause*. In answering that question the
42 defences advanced in each action must be (23) _____.

43 The essential question is whether the claims in England in Greece are mirror images of each other and
44 thus legally irreconcilable. There are three heads of claim in England: (24) _____,
45 _____ and _____. None
46 of the causes of action relied upon in the Greek proceedings has identity of cause or identity of object
47 with the insurers' claims for an indemnity. The (25) _____ of the
48 claims is different, the Greek proceedings are claims in tort, or its Greek equivalent, and the claims in
49 England are claims in contract under the settlement agreements.

50 As to object, that of the Greek proceedings is to establish a liability under Greek law (26)
51 _____ to tort, whereas the object to the insurers' claim is to establish a right to be
52 indemnified in respect of such a liability. The same is true of the insurers' claims in respect to the
53 exclusive jurisdiction (27) _____ in the settlement agreements and/or in the insurance
54 policies.

55 The causes of action based upon, an (28) _____ of
56 the settlement agreements, are not the same causes of action as are advanced in Greece, **nor do they**
57 **have the same object**.

58 The same is also true of the claims based on the release (29) _____ in the
59 settlement agreements. The Greek claims are claims in tort and the English proceedings are contractual
60 claims. The legal and (30) _____ for the two claims
61 are entirely different. Moreover the object of the two claims is different. The Supreme Court is (31)
62 _____ that that is the position with regard to the claims for damages for breach of
63 the release provisions in the settlement agreements.

64 However, in so far as the insurance claim declarations based upon the release provisions, while a (32)
65 _____ reaches the same conclusion, Lord Mance reaches a different conclusion on
66 the basis that the claims for declarations in the two jurisdictions are (33) _____
67 _____ of each other.

68 However the Supreme Court decides unanimously that unless the insurers (34)
69 _____ those claims with declarations, a relevant question should be (35)
70 _____ to the CJEU for an opinion. In the event, the CMI have now abandoned
71 their claims for declarations based on the release provisions, it follows that the CMI's appeals under
72 Article 27 are (36) _____. If the LMI do the same within the time permitted, their
73 appeal will also be allowed under Article 27. If they do not, their appeal under Article 27 will be allowed
74 (37) _____.

75 A similar position has been reached in respect to the (38) _____ that appeals
76 under Article 27 should have been (39) _____ by the Court of Appeal as too late.
77 As to Starlight's cross-appeal from the order of the judge and Article 28, in the exercise of its discretion
78 the Supreme Court unanimously dismisses it. The (40) _____ court to consider
79 the issues raised by the CMI and the LMI is the High Court in England because they raise contractual
80 questions governed by English law and because it is at least (41) _____ that the
81 parties have agreed that they should be decided by the High Court where the proceedings are in any event
82 more advanced than in Greece.

83 In these circumstances I do not think that I should take up time this morning on a fascinating discussion
84 either of the (42) _____ first seised under the Regulation or of any of the other
85 issues (43) _____ by this interesting and difficult case.

86 The court invites the parties to make written submissions on the form of the (44)
87 _____ and on (45) _____ within 21 days.

88 The court is now (46) _____.

(b) Look at the structure on line 57:

“The causes of action based upon, an alleged breach of the settlement agreements, are not the same causes of action as are advanced in Greece, **nor do they have the same object.**”

- “**NOR DO THEY HAVE THE SAME OBJECT**”: this structure is called ‘**inversion**’. In this kind of structure the order is reversed and the verb phrase or the operator comes before the subject (*Only once have I been in court*). Verbs that are not modal verbs or that are not the verbs *to be/to have* place the operator before the verb, as in a question (*At no time did defence lawyer interview the witness; Only then did the claimant react to the submissions by the defence lawyer*). In legal English you will find inversion in the following cases²:

- 1. As a conditional clause (instead of an *if*-clause):

Had the prosecutor been aware of the existence of a witness...

Should the court issue judgment in the afternoon...

Were the judge to dismiss the case...

- 2. In subject-operator inversion, in the following cases:

- a) Degree expressions with *so* and *such*.

So anxious was Mary about being summoned to court that she could hardly breathe for a while.

Such was the relevance of the new case that the judge had to adjourn another case before him.

- b) Negative and restrictive opening elements: *neither, nor, never, nowhere, on no condition, not only, hardly, no sooner, rarely, seldom, little, less, only, etc.*

Rarely have I seen contempt of court in all my years of practice.

Little did the defendant know that new evidence was about to be produced.

‘I wasn’t aware that it was the right moment for submissions.’ ‘Nor was I’.

Now do inversion in the following sentences:

- 1. The court first seised has not claimed that it lacks jurisdiction.

Northe court second seised.

- 2. Institutions must never violate vulnerable people’s rights.

Never

- 3. National courts have rarely provided legal aid in such cases.

Rarely

- 4. There has seldom been so much publicity about a ruling issued by the CJEU.

Seldom

- 5. Some EU countries will never support same-sex marriages.

Never

- 6. Claimants must never show lack of respect for the judge during hearings.

On no account

² In general English you may have seen it in formulaic expressions such as *So help me God; Long live the Queen, etc.*

(c) Read the following summary of the case from the previous exercise and answer the questions that follow it.



PRESS SUMMARY

6 November 2013

In the matter of “The Alexandros T” [2013] UKSC 70

On appeal from [2012] EWCA Civ 1714

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Clarke, Lord Sumption and Lord Hughes

1 BACKGROUND TO THE APPEALS

2 On 3 May 2006, the vessel Alexandros T sank and became a total loss 300 miles south of Port
3 Elizabeth with considerable loss of life. Her owners were Starlight Shipping Company (“Starlight”).
4 Starlight made a claim against their insurers, who denied liability on the basis that the vessel was
5 unseaworthy with the privity of Starlight. In response, Starlight made a number of serious allegations
6 against their insurers including allegations of misconduct involving tampering with and bribing of
7 witnesses.

8 On 15 August 2006, Starlight issued proceedings in the Commercial Court against various insurers
9 (“the 2006 proceedings”). One group of insurers was described as the Company Market Insurers
10 (“CMI”) and the other group was described as the Lloyd’s Market Insurers (“LMI”). Before the
11 hearing, the 2006 proceedings were settled between Starlight and the insurers and the proceedings
12 were stayed by way of a Tomlin Order.

13 In April 2011, nine sets of Greek proceedings, in materially identical form, were issued by Starlight
14 although they were expressed as torts actionable in Greece. The insurers sought to enforce the
15 earlier settlement agreements. Starlight applied for a stay of these proceedings, firstly pursuant to
16 Article 28 then Article 27 of Council Regulation (EC) No 44/2001 (“the Regulation”)

17 The judge refused to grant a stay under Article 28 and gave summary judgment to the insurers. The
18 Court of Appeal held that it was bound to stay the 2006 proceedings under Article 27, which provides
19 for a mandatory stay, and it was not therefore necessary to reach a final determination of the position
20 under Article 28. Before the Supreme Court, the insurers challenge the correctness of the Court of
21 Appeal’s conclusion under Article 27 and submit that the judge was correct to refuse a stay under
22 Article 28. Starlight cross-appeal on the Article 28 point.

23 JUDGMENT

24 Subject to the possibility of a reference to the CJEU on some limited questions, the Supreme Court
25 unanimously allows the CMI’s and LMI’s appeal. Lord Clarke gives the lead judgment, with which
26 Lord Sumption and Lord Hughes agree. Lord Neuberger agrees adding a short judgment of his own.
27 Lord Mance agrees with the result.

28 REASONS FOR THE JUDGMENT

29 *Article 27*

30 Article 27 must be construed in its context. The purpose of Article 27 is to prevent the courts of two
31 Member States from giving inconsistent judgments and to preclude, so far as possible, the non-
32 recognition of a judgment on the ground that it is irreconcilable with a judgment given by the court

33 of another Member State [23, 27].

34 In the case of each cause of action relied upon, it is necessary to consider whether the same cause of
35 action is being relied upon in the Greek proceedings. In doing so, the defences advanced in each
36 action must be disregarded [29]. The essential question is whether the claims in England and Greece
37 are mirror images of each other and thus legally irreconcilable [30]. There are three heads of claim
38 in England: indemnity, exclusive jurisdiction and release [32].

39 None of the causes of action relied upon in the Greek proceedings has identity of cause or identity of
40 object with the CMI's claim for an indemnity. The subject matter of the claims is different. The
41 Greek proceedings are claims in tort (or its Greek equivalent) and the claims in England are claims in
42 contract. As to object, that of the Greek proceedings is to establish a liability under Greek law akin to
43 tort, whereas the object of the CMI's claim is to establish a right to be indemnified in respect of such
44 a liability and to claim damages for breach of the exclusive jurisdiction clauses [34].

45 The same is true of the CMI's claims in respect of the exclusive jurisdiction clauses in the settlement
46 agreement and/or in the insurance policies [36]. The causes of action, based upon an alleged breach
47 of the settlement agreement, are not the same causes of action as are advanced in Greece [37].

48 The same is also true of the claims based on the release provisions in the CMI settlement agreement
49 [40]. The Greek claims are claims in tort and the English proceedings are contractual claims. The
50 factual bases for the two claims are entirely different. Moreover, the object of the two claims is
51 different [41]. The Supreme Court is unanimous that that is the position with regard to the claims
52 for damages for breach of the release provisions in the settlement agreements. However, in so far as
53 the insurers claim declarations, while the majority reaches the same conclusion, Lord Mance reaches
54 a different conclusion on the basis that the claims for declarations in the two jurisdictions are mirror
55 images of each other. The court unanimously decides that, unless the insurers abandon those claims
56 for declarations, the relevant question should be referred to the CJEU for an opinion [59].

57 In the event, the CMI have now abandoned their claims for declarations based on the release
58 provisions and it is not necessary to refer the question to the CJEU. It follows that the CMI's appeals
59 under Article 27 are allowed. The position of the LMI is essentially the same as in the case of the
60 CMI [55]. If the LMI do the same within the time permitted, their appeals will also be allowed under
61 Article 27. A similar position has been reached in respect of LMI's submission that the appeals under
62 Article 27 should have been rejected by the Court of Appeal as being too late [123].

63 Article 28

64 The discretion to stay claims under Article 28 is limited to any court other than the court first seised
65 [74]. On the assumption that the English court is second seised for the purposes of Article 28, the
66 question arises whether the actions should be stayed as a matter of discretion [91]. The circumstances
67 of each case are of particular importance but the aim of Article 28 is to avoid parallel proceedings and
68 conflicting decisions. In a case of doubt it would be appropriate to grant a stay [92]. However, the
69 natural court to consider the issues raised by CMI and LMI is the High Court in England because
70 they raise contractual questions governed by English law and because it is at least arguable that the
71 parties have agreed that they should be decided by the High Court, where the proceedings are more
72 advanced than in Greece [96]. The decision of the judge in refusing a stay under Article 28 is upheld
73 and the cross-appeal is dismissed [97, 125].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html

Answer the following questions:

1. On what basis did the insurers deny liability?
2. What do you think a “privity of contract” is? Can you look it up?
3. What was Starlight’s response to the insurers when they denied liability?
4. Before the hearing, the 2006 proceedings were settled between Starlight and the insurers. How were the proceedings stayed then?
5. How many proceedings were issued by Starlight in April 2011 and what form did they have?
6. What do the insurers submit before the Supreme Court?
7. What do the insurers challenge before the Supreme Court and on what basis?
8. What is the basis of Starlight’s cross-appeal?
9. What is the judgment of the court?
10. How many judges agree and how many disagree?
11. What is the purpose of Article 27?
12. What is the essential question to be decided on the claims in England and Greece?
13. What are the three heads of claim in England?

14. What is the subject matter and the object of the claim in England and in Greece?
15. When should a question be referred to the CJEU for an opinion?
16. What is the limitation of the discretion to stay claims under Article 28?
17. What is the aim of Article 28?
18. What is the natural court to consider the issues raised by CMI and LMI and why?
19. What is the decision of the court as regards the outcome of the case in the Court of Appeal?

17. Reading exercise.

(a) Read the following summary of the case (press release) on *Olivier Martinez and Robert Martinez v MGN Limited*.

Court of Justice of the European Union

PRESS RELEASE No. 115/11

Luxembourg, 25 October 2011

Judgment in Joined Cases C-509/09 and C-161/10

eDate Advertising GmbH v X and Olivier Martinez and Robert Martinez v MGN Limited

Victims of infringements of personality rights by means of the internet may bring actions before the courts of the Member State in which they reside in respect of all of the damage caused.

However, the operator of an internet website covered by the e-commerce directive cannot be made subject, in that State, to stricter requirements than those provided for by the law of the Member State in which it is established

1 The Brussels Regulation¹ provides that persons domiciled in a Member State are, in principle,
2 to be sued before the courts of that State. However, in matters relating to tort, delict or quasi-
3 delict, a person may also be sued in another Member State before the courts for the place
4 where the harmful event occurred or may occur. Thus, in the case of defamation by means of
5 a written newspaper article distributed in several Member States, the victim has two options
6 for bringing an action for compensation against the publisher. On the one hand, he may bring
7 an action before the courts of the State in which that publisher is established, which have
8 jurisdiction to award damages for all of the harm caused by the defamation. On the other
9 hand, he may bring an action before the courts of each Member State in which the
10 publication was distributed and where he claims to have suffered injury to his reputation
11 (place in which the damage occurred). In the latter case, however, the national courts have
12 jurisdiction only in respect of damage caused in the State in which they are located.

13 *Facts of Case C-161/10*

14 On 3 February 2008 a text written in English and entitled 'Kylie Minogue is back with Olivier
15 Martinez' appeared on the website of the British newspaper the *Sunday Mirror*, with details
16 of the meeting between the Australian singer and the French actor. The latter and his father,
17 Robert Martinez, alleged interference with their private lives and infringement of the right of
18 Olivier Martinez to his image and brought an action, in France, against the British company
19 MGN, which publishes the *Sunday Mirror*. MGN (...) challenges the international
20 jurisdiction of the court before which the action has been brought, arguing that there is no
21 sufficiently close connecting factor between the placing online of the information in the
22 United Kingdom and the alleged damage in French territory. Such a link alone, it argues,
23 could establish the jurisdiction of the French courts to rule on the facts giving rise to damage
24 and attributable to the placing of the material at issue online.

25 ¹Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement
26 of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

(b) Fill in the blanks with the correct preposition. Each of them may be used more than once.

[This exercise is based on the previous case. The names of the parties and reference to countries have been changed]

about, against, by, for, from, in, of, on, over, to, with

- 1) The publisher took its claim _____ Europe's highest court and argued that an Italian judge did not have the power to adjudicate on English-language articles published _____ a UK website.
- 2) Smith sued *The Globe* newspapers successfully in 2002 _____ an online article about his relationship _____ a previous girlfriend.
- 3) The ruling in Luxembourg follows the 2002 privacy action brought _____ Italy by Smith _____ *The Globe*.
- 4) The Court added that under the EU e-commerce directive, which governs all online services, the publisher of an internet article should not be subject _____ "stricter requirements" relating _____ "personality rights" than they would face in their own country.
- 5) (...) universal distribution, firstly, is liable _____ increase the seriousness of the infringements _____ personality rights.
- 6) *The Globe* was ordered to pay €3,400 _____ damages _____ each article published.
- 7) (...) European publishers can be sued anywhere in the EU _____ articles published _____ the internet.
- 8) Smith won damages _____ *The Globe* after he claimed that the newspaper's stories _____ his relationship with his previous girlfriend affected his reputation negatively in Italy.
- 9) (...) the court holds that the placing online of content _____ an internet website is to be distinguished _____ the regional distribution of printed matter by reason of the fact that it can be consulted instantly _____ an indefinite number of internet users worldwide.
- 10) The case went to the CJEU for a jurisdiction ruling after *The Globe* argued that the Italian courts did not have the power to pass judgment _____ articles published _____ *The Globe* website.
- 11) Victims _____ intrusive online material will now be able to sue _____ their country of residence, as opposed _____ the EU member state of the publisher.
- 12) Victims can also sue in any EU member state where the online article has been accessed _____ readers and in the state where the publisher is based "in respect _____ all the damage caused", the CJEU said.

(c) Now choose the correct option(s) below.

Judgment of the Court

In its **(1)** _____ delivered today, the Court **(2)** _____ that the placing online of content on an internet website **(3)** _____ the regional distribution of printed matter by reason of the fact that it can be consulted instantly by an **(4)** _____ number of internet users world-wide.

(1) (a) finding (b) order (c) judgment (d) award

(2) (a) understands (b) holds (c) argues (d) thinks

(3) (a) is to be distinguished from

(b) is distinguished of

(c) will be differentiated from

(d) is to be distinct off

(4) (a) uncertain (b) indeterminated (c) ilimited (d) indefinite

Thus, universal distribution, firstly, is **(5)** _____ to increase the **(6)** _____ of the **(7)** _____ of personality rights and, secondly, makes it extremely difficult to **(8)** _____ the places in which the damage resulting from those infringements has occurred.

(5) (a) likely (b) bound (c) probably (d) liable

(6) (a) severity (b) seriousness (c) gravity (d) earnestness

(7) (a) breaks (b) violations (c) infringements (d) breaches

(8) (a) locate (b) find (c) spot (d) place

In those circumstances, - given that the impact which material **(9)** _____ online is liable to have on an individual's personality rights **(10)** _____ by the court of the place where the victim has his centre of interests -, the Court of Justice **(11)** _____ that court as having jurisdiction in respect of all damage caused within the territory of the European Union.

(9) (a) put (b) placed (c) uploaded (d) positioned

- (10) (a) could best be assessed
 (b) may best be assessed
 (c) might best be assessed
 (d) must better be assessed

- (11) (a) names (b) denominates (c) appoints (d) designates

In that context, the Court **(12)** _____ that the place where a person has the centre of his interests corresponds in general to his **(13)** _____ residence.

- (12) (a) believes (b) says (c) states (d) submits
 (13) (a) habitual (b) usual (c) frequent (d) permanent

The Court points out, however, that, in place of an action for **(14)** _____ in respect of all of the damage, the victim may always bring an action **(15)** _____ the courts of each Member State in the territory of which the online content is or has been accessible.

- (14) (a) responsibility (b) liability (c) accountability (d) answerability
 (15) (a) in front of (b) at (c) before (d) on

In that case, in the same way as damage caused by printed matter, those courts have **(16)** _____ to deal with cases only in relation to damage which **(17)** _____ within the territory of the State in which they are **(18)** _____.

- (16) (a) competence (b) jurisdiction (c) power (d) discretion
 (17) (a) occurred (b) arised (c) happened (d) took place
 (18) (a) placed (b) established (c) settled (d) situated

Similarly, the person whose rights have been infringed may also bring an action, **(19)** _____ all of the damage **(20)** _____, before the courts of the Member State in which the publisher of the online content is established.

- (19) (a) in respect (b) in respect of (c) in respect to (d) in respect off
 (20) (a) provoked (b) created (c) caused (d) produced

18. Exclusive Jurisdiction.

(a) Fill in the gaps with the appropriate word. You have a near-synonym as a clue in brackets.

JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

EXCLUSIVE JURISDICTION IN MATTERS RELATING TO RIGHTS IN REM IN IMMOVABLE PROPERTY

JUDGMENT OF THE COURT (Third (1) _____)
(SECTION, DIVISION)

3 October 2013

(Jurisdiction and recognition and enforcement of judgments in civil and commercial matters – Regulation (EC) No 44/2001 – Scope – Legal (2) _____ (CAPABILITY; ABILITY) of natural persons – (3) _____ (UNIQUE; FULL; SOLE) jurisdiction in matters relating to rights in rem in (4) _____ (STATIONARY, FIXED) property – Scope – Non-contentious proceedings concerning the right of a person who has been placed under (5) _____ (TUTORSHIP, PROTECTION, CARE) and is domiciled in a Member State to dispose of immovable property situated in another Member State)

In Case C-386/12,

(6) _____ (PETITION, DEMAND) for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Bulgaria), made by decision of 29 June 2012, received at the Court on 13 August 2012, in the proceedings (7) _____ (STARTED, BEGAN, COMMENCED) by

Siegfried János Schneider,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, E. Jarašiūnas, A.Ó. Caoimh, C. Toader **(8)** (_____) (*REPORTER, SPOKESPERSON*) and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted **(9)** _____
_____ (*ON SOMEONE'S NAME, INSTEAD OF SOMEONE*):

– the German Government, by T. Henze and J. Kemper, acting as Agents,

– the Hungarian Government, by K. Szíjjártó and Á. Szilágyi, acting as Agents,

– the Austrian Government, by A. Posch, acting as Agent,

– the United Kingdom Government, by A. Robinson, acting as Agent,

– the European Commission, by V. Savov and M. Wilderspin, acting as Agents,

having decided, after hearing the Advocate General, to **(10)**
_____ (*GO AHEAD, ADVANCE, CONTINUE*) to judgment
without an Opinion,

gives the following

Judgment

1. This request for a preliminary ruling **(11)** _____ (*IS ABOUT, INVOLVES*) the interpretation of Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p.1).
2. The request has been made in non-contentious proceedings brought by Mr Schneider – a Hungarian national who has been **(12)** _____ (*PUT, ASSIGN, SET*) under guardianship – for **(13)** _____ (*PERMISSION; APPROVAL*) to sell his share of a property situated in the Republic of Bulgaria.

(b) Fill in the gaps with the appropriate form of the word in brackets.

- The dispute in the main proceedings and the question **(1)** _____ (*REFERENCE*) for a preliminary ruling
8. **(2)** _____ (*PURSUE*) to Hungarian legislation, a Hungarian court placed Mr. Schneider under guardianship and, for those purposes, **(3)** _____ (*APPOINTMENT*) as legal representative and **(4)** _____ (*OFFICE*) guardian for him a person who is also a Hungarian **(5)** _____ (*NATION*).
9. Following the **(6)** _____ (*DIE*) of his mother on 17 June 2009, Mr Schneider **(7)** _____ (*HEIR*) a half-share in an apartment in Lovech (Bulgaria); his brother owns the other half-share.
10. Acting with the **(8)** _____ (*APPROVE*) of his guardian, Mr. Schneider applied to the Sofiyski rayonen sad (Sofia District Court) for authorisation to sell his share of that property. In support of his **(9)** _____ (*APPLY*), he claimed that the **(10)** _____ (*SELL*) would help him to meet his individual needs in Hungary, in particular, the costs of constant healthcare and accommodation in a healthcare **(11)** _____ (*ESTABLISH*).
11. By **(12)** _____ (*DECIDE*) of 29 February 2012, the Sofiyski rayonen sad **(13)** _____ (*REFUSAL*) that application on the ground that disposal of the property in question was not in the interests of a person declared to be **(14)** _____ (*LACK*) full legal capacity. That court decided that Mr. Schneider's interests as an adult under guardianship would be **(15)** _____ (*ADVERSE*) affected if his immovable property were to be sold and the money thus obtained put into a trust fund, leaving him **(16)** _____ (*HOME*) in Hungary.
12. Mr. Schneider brought an **(17)** _____ (*APPEAL*) against that decision before the Sofiyski gradski sad (Sofia City Court).
13. On the view that it is unclear from Article 22(1) of Regulation No.44/2001 whether that **(18)** _____ (*PROVIDE*) can be applied to non-contentious **(19)** _____ (*PROCEED*) such as those pending before it, the Sofiyski gradski sad decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary **(20)** _____ (*RULE*):

(c) Formulate, in one sentence only, the question referred to the CJEU by the Bulgarian national court using all these questions in order:

1. Is it possible to apply Article 22(1) of Regulation No 44/2001?

2. Is it possible to apply the article to contentious proceedings if they have as their object rights in rem?

3. Does the article apply to non-contentious proceedings under national law...
 - if a national of an MS has been found not to have full legal capacity?

 - and if a guardian who is a national has been appointed for the person who lacks capacity?

4. Does the article apply if the person who lacks legal capacity tries to dispose of immovable property which belongs to him and which is in another Member State?

Write your paragraph here:

(d) Fill in the gaps with the appropriate preposition.

The question referred **(1)** _____ a preliminary ruling

14. By its question, the referring court asks, **(2)** _____ essence, whether Article 22(1) of Regulation No 44/2001 must be interpreted as applying **(3)** _____ non-contentious proceedings by which a national **(4)** _____ a Member State who has been declared to be lacking full legal capacity and placed **(5)** _____ guardianship in accordance **(6)** _____ the law of that State applies to a court in another Member State **(7)** _____ authorisation to sell his share of a property situated **(8)** _____ that other Member State.
15. All the Member States which have submitted observations **(9)** _____ the Court are **(10)** _____ the opinion, as is the European Commission, that that question calls **(11)** _____ a negative answer.

(...)

22. As has been argued **(12)** _____ all the Member States which have lodged written observations and **(13)** _____ the European Commission, an application such as that lodged **(14)** _____ the referring court does not fall **(15)** _____ the scope of Regulation No 44/2001.

(...)

Costs

32. Since these proceedings are, **(16)** _____ the parties to the main proceedings, a step **(17)** _____ the action pending before the national court, the decision **(18)** _____ costs is a matter for that court. Costs incurred **(19)** _____ submitting observations to the Court, other than the costs of those parties, are not recoverable.

(20) _____ those grounds, the Court (Third Chamber) hereby rules ...
(...)

(e) Formulate, in one sentence only, the ruling of the court, using the following information in order:

1. Council Regulation (EC) No.44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not applying to non-contentious proceedings;
2. in particular, Article 22(1) of the Regulation is not applicable;
3. in the non-contentious proceedings a national applies to a court in another Member State for authorization;
4. the national is from of a Member State and has been declared to be lacking full legal capacity;
 - the national has been placed under guardianship in accordance with the law of that State;
 - the application by the national is to sell his share of a property situated in other Member State;
 - the Regulation is not applicable because the proceedings are concerned with the 'legal capacity of natural persons';
 - with the 'legal capacity of natural persons' must be interpreted in accordance with Article 1(2)(a) of the Regulation
 - the matter falls outside the scope of the Regulation.

Write your paragraph here:

(f) If you look at line 68, you will find the following structure, which refers to a future possibility:

That court decided that Mr. Schneider's interests as an adult under guardianship would be adversely affected if his immovable property were to be sold and the money thus obtained put into a trust fund, leaving him homeless in Hungary

Here are some examples of use of the structure “to be to do something” in English. Please say whether they all convey the idea of “future possibility”. If that is not the case, suggest another option.

1. At the end of the year, all students are to take an oral exam.
2. What am I to say?
3. The Prime Minister was to speak at the summit.
4. You can go to Sarah's party but you are not to return later than 11pm.
5. If you are to work in this country for longer than six months, you must have a work permit.
6. The CEO was to have spoken at the meeting, but his flight was late and he didn't make it.
7. A man is to appear in court today charged with the murder of his girlfriend.
8. If I were to bring my offer down from 100 euros to 80 euros, would you be interested in buying my bike then?
9. No food of any kind is to be taken into the examination room.

19. Jurisdiction in matters relating to insurance

(a) Read the following judgment and fill in the gaps with the appropriate preposition.

1 JUDGMENT OF THE COURT (Third Chamber)

2 17 September 2009 (*)

3 (Regulation (EC) No 44/2001 – Articles 9(1)(b) and 11(2) – Jurisdiction (1)
4 _____ matters relating to insurance – Motor accident – Statutory assignment
5 of the rights of an injured party in favour of a social security institution – Action (2)
6 _____ recovery against the insurer of a person allegedly liable – Objective of
7 protecting the weaker party)

8 In Case C-347/08,

9 REFERENCE (3) _____ a preliminary ruling under Articles 68 EC and 234 EC
10 from the Landesgericht Feldkirch (Austria), made (4) _____ decision of 14 July
11 2008, received at the Court on 28 July 2008, in the proceedings

12 **Vorarlberger Gebietskrankenkasse**

13 v

14 **WGV-Schwäbische Allgemeine Versicherungs AG,**

15 THE COURT (Third Chamber),

16 (...)

17 having decided, after hearing the Advocate General, to proceed (5) _____
18 judgment without an Opinion,

19 gives the following

20 **Judgment**

21 1. This reference for a preliminary ruling concerns the interpretation of Council Regulation
22 (EC) No 44/2001 of 22 December 2000 (6) _____ jurisdiction and the
23 recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12,
24 p. 1).

25 2. The reference has been made in the context of an action for recovery by the Vorarlberger
26 Gebietskrankenkasse, established in Dornbirn (Austria) ('VGKK'), (7)
27 _____ WGV-Schwäbische Allgemeine Versicherungs AG, established in
28 Stuttgart (Germany) ('WGV-SAV').

29 **Legal context**

30 (...)

31 16. On 10 March 2006, a road traffic accident occurred **(8)** _____ a
32 motorway in Germany, involving Ms Gaukel, the driver of a vehicle insured in Germany
33 **(9)** _____ civil liability with the WGV-SAV, and Ms Kerti, the driver of
34 another vehicle. Ms Kerti had to brake suddenly because of traffic. Ms Gaukel, the driver of
35 the vehicle immediately behind, crashed **(10)** _____ the back of Ms Kerti's
36 vehicle. The crash resulted **(11)** _____ a distortion **(12)** _____
37 Ms Kerti's spinal column and she had to undergo various types of medical treatment. The
38 doctors treating her also certified her as unfit to work from 15 to 21 March 2006. VGKK, a
39 social security institution, provided benefits to its insured, Ms Kerti.

40 17. During the period **(13)** _____ 2 January 2006 **(14)** _____ 20
41 August 2007, Ms Kerti was domiciled in Bludenz (Austria). Since then, she has been
42 resident in Ubstadt-Weiher (Germany).

43 18. Basing itself **(15)** _____ the statutory assignment of Ms Kerti's rights in
44 accordance **(16)** _____ Paragraph 332 of the ASVG, VGKK, by letter of 22
45 September 2006, applied **(17)** _____ payment from WGV-SAV by 24 October
46 2006 of the expenses which it had incurred in providing benefits to its insured. VGKK
47 claimed that the sole liability for the accident rested **(18)** _____ WGV-SAV's
48 insured.

49 19. As no payment was made, VGKK brought, on 13 February 2008, an action for recovery
50 in the Bezirksgericht Dornbirn (District Court, Dornbirn) (Austria) against WGV-SAV.
51 **(19)** _____ disputing the substance of the action, WGV-SAV contended that the
52 Bezirksgericht Dornbirn lacked international jurisdiction to hear the action. It contended,
53 first, that, _____ view of their origin, the rights **(20)** _____
54 dispute were those of Ms Kerti, who, **(21)** _____ the time of lodging the action,
55 was resident in Germany. Second, the dispute was **(22)** _____ two parties of
56 equal status, so that the claimant did not qualify for protection under Regulation No
57 44/2001.

58 20. By order of 21 May 2008, the Bezirksgericht Dornbirn dismissed the action **(23)**
59 _____ the ground of lack of international jurisdiction.

60 21. VGKK accordingly appealed **(24)** _____ the Landesgericht Feldkirch
61 (Regional Court, Feldkirch) (Austria) claiming that that court should set aside the order of
62 21 May 2008 and order the court of first instance to continue the proceedings.

63 22. The Landesgericht Feldkirch raises three arguments **(25)** _____ favour of
64 the jurisdiction of the Austrian courts. First of all, in its view, VGKK should be considered
65 to be the injured party, since, following the accident, it provided benefits **(26)**
66 _____ Ms Kerti. Second, **(27)** _____ reason of the statutory
67 assignment pursuant **(28)** _____ Paragraph 332 of the ASVG, VGKK
68 succeeded at the very moment of the accident to all of Ms Kerti's rights. Having assumed
69 the legal position of its insured, it is that person's rights and not its own which VGKK
70 claims in its action. Third, in the case of serious accidents involving personal injury, the
71 directly injured party retains his right **(29)** _____ damages **(30)**
72 _____ pain and suffering as well as for damage **(31)** _____ property.

73 He can sue for that damage **(32)** _____ the court of his place of domicile. Rights
74 to reimbursement of the costs of medical treatment and any pension benefits will, in that
75 case, be transferred **(33)** _____ the social security institution. If that institution
76 were unable to avail itself of the same jurisdiction, it would thus have to bring an action for
77 recovery **(34)** _____ a court of another Member State. In those
78 circumstances, courts of different Member States would deliver judgments **(35)**
79 _____ the same facts, which would run counter **(36)** _____
80 the aims of Regulation No 44/2001, inasmuch as those courts might deliver conflicting
81 judgments.

82 23. However, according **(37)** _____ the national court, there are two
83 arguments which do not support recognising the Austrian courts as having jurisdiction.
84 First, the objective of Directive 2000/26 is to protect the weaker party by making it
85 substantially simpler and easier to bring claims **(38)** _____ compensation in
86 the event of road accidents with a foreign element. (...)

87 24. It is in those circumstances that the Landesgericht Feldkirch decided to stay
88 proceedings and to refer the following questions **(39)** _____ the Court of Justice
89 **(40)** _____ a preliminary ruling:

90 '1. Is the reference in Article 11(2) of [Regulation No 44/2001] to Article 9(1)(b) of that
91 regulation to be interpreted as meaning that a social security institution, to which the
92 claims of the directly injured party have passed **(41)** _____ operation of law
93 (Paragraph 332 of the ... ASVG), may bring an action directly **(42)** _____ the
94 insurer in the courts for the place in a Member State where the social security institution is
95 established, provided that such a direct action is permitted and the insurer is domiciled
96 **(43)** _____ a Member State?

97 2. If the answer to Question 1 is **(44)** _____ the affirmative:

98 Does that jurisdiction exist even if **(45)** _____ the time of bringing the action
99 the directly injured party is not permanently or ordinarily resident in the Member State in
100 which the social security institution is established?'

(b) Before reading the following excerpt from the same case, answer the following question:

Imagine you are a judge in the Chamber. What would you do if there were differences between the different language versions of some key terms in Regulation No 44/2001?

(c) Now read the text below and answer the question that comes after it:

1 The questions referred for a preliminary ruling

2 *Preliminary observations*

3 25. It should be pointed out at the outset that there are differences between the different
4 language versions of Article 11(2) of Regulation No 44/2001. The French version uses the
5 term 'victime', which, on a semantic interpretation, refers to the person who directly
6 suffered the damage. On the other hand, the version in German, which is the language of

7 the case, uses the term ‘der Geschädigte’, which means the ‘injured party’. Accordingly,
8 that term may refer not only to persons who directly suffered the damage, but also to
9 persons who suffered it indirectly.

10 26. In this respect, it is settled case-law that the need for a uniform interpretation of
11 Community law makes it impossible for the text of a provision to be considered, in case of
12 doubt, in isolation; on the contrary, it requires that it be interpreted also in the light of the
13 versions existing in the other official languages (see Case 9/79 *Koschniske* [1979] ECR
14 2717, paragraph 6; Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph
15 36; and Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu* [2006] ECR
16 I-2443, paragraph 20) and by reference to the purpose and general scheme of the rules of
17 which that provision forms part (Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14).

18 27. In the present case, it should be borne in mind, first, that, like the German version,
19 other language versions of Article 11(2) of Regulation No 44/2001 use a term equivalent to
20 ‘the injured party’ (in French, ‘la personne lésée’). This is true of the following language
21 versions: Spanish (‘persona perjudicada’), Czech (‘poškozený’), Danish (‘skadelidte’),
22 Estonian (‘kahju kannatanud pool’), Italian (‘persona lesa’), Polish (‘poszkodowany’),
23 Slovak (‘poškodený’) and Swedish (‘skadelidande’). Second, in paragraph 26 of its
24 judgment in *FBTO Schadeverzekeringen*, the Court ruled that the purpose of the reference
25 in Article 11(2) of Regulation No 44/2001 is to add injured parties to the list of plaintiffs
26 contained in Article 9(1)(b) of that regulation, without restricting the category of persons
27 having suffered damage to those suffering it directly.

28 28. It follows that Article 11(2) of Regulation No 44/2001 must be interpreted as referring
29 to the injured party.

Is there a difference in your language between 'victim', 'casualty', 'injured party', 'affected party', 'aggrieved party' and 'third party'? Could you explain the differences in your own words?

(d) Now read the preliminary ruling below and say whether you agree with it or not and why.

1 On those grounds, the Court (Third Chamber) hereby rules:

2 The reference in Article 11(2) of Council Regulation (EC) No 44/2001 of 22 December
3 2000 on jurisdiction and the recognition and enforcement of judgments in civil and
4 commercial matters to Article 9(1)(b) thereof must be interpreted as meaning that a social
5 security institution, acting as the statutory assignee of the rights of the directly injured
6 party in a motor accident, may not bring an action directly in the courts of its Member
7 State of establishment against the insurer of the person allegedly responsible for the
8 accident, where that insurer is established in another Member State.

(e) Paragraph 26 above says:

“In this respect, it is settled case-law that the need for a uniform interpretation of Community law makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted also in the light of the versions existing in the other official languages”

This is a **subjunctive** in English. The subjunctive has practically disappeared from general English, with perhaps the only exception of very formal/very academic language³. Here are some important aspects to remember about the subjunctive:

1. It has the following structure: adjective/noun/verb + (that) + subject + the infinitive (without “to”). Do not forget that the verb does not show concordance with the subject.

It’s important that *you get to court* before 10.

I demanded that *he apologise*.

What do you suggest *we do*?

2. In colloquial language it has been replaced by the verb in the present, in the past, or “should” (It is essential that the evidence *is* considered; The court requested that the applicant *sent* the form).

The subjunctive is used in the following cases:

1. After adjectives such as “important”, “essential”, “crucial”, “advisable”, “urgent”, etc.

It is essential that the expert witness appear in court.

It is crucial that urgent measures be taken as quickly as possible.

2. After verbs such as: “ask”, “advise”, “command”, “demand”, “insist”, “order”, “propose”, “recommend”, “request”, “require”, “suggest”, “urge”.

We will recommend that she attend a formal hearing.

3. After nouns, in expressions like the following:

There is also the recommendation that the lawyers of both parties try Alternative Dispute Resolution.

There is the obligation that the judgment be enforced.

³ There are a few cases when it is used in general English (for example, fixed expressions: ‘God save the Queen’, ‘so be it’, ‘God bless you’, etc.). It is also occasionally seen in clauses expressing a condition, such as *If I be found guilty...* This usage is old-fashioned and excessively formal but it is still found in some common fixed expressions such as *if need be*.

The use of the subjunctive seems very awkward when it involves a passive structure, a negative structure or a continuous tense, as in the following examples:

It is *important that the solicitor be waiting* for the barrister when she arrives in court.

He insisted *that Smith not be* defence lawyer in the case.

They recommended *that the summons be served* promptly.

Now use the subjunctive in the following sentences:

1. The Tribunal de Commerce de Paris ordered that _____ (ALL THE PROCEEDINGS, JOIN).
2. The judge ordered that _____ (SUCH AN OBJECTION, DISMISS) as inadmissible.
3. The prosecutor suggested that _____ (EXHIBITS ONE TO FOUR, MAKE) available to the jury.
4. Counsel recommended that defendant _____ (CHANGE, HIS APPROACH) to the facts.
5. It was requested that _____ (THE PARTIES, BE) present in the hearing.
6. It is essential that witnesses _____ (BE) available in the premises of the court at all times.
7. The judge requested that the jury _____ (LEAVE) the courtroom for a few minutes.
8. There is also the requirement on the vendor's part that advance payments _____ (MAKE) before the end of the period during which the purchaser may withdraw without giving reasons.
9. The Commission may request that standards _____ (DRAW UP) by the European standards organisations.
10. In the event of a withdrawal, an order that a party _____ (BEAR) the costs of the other party is only possible if the other party has made an application to that effect.
11. The President of the Fourth Chamber has ordered that the case _____ (REMOVE) from the register.

20. Lis pendens, prorogation of jurisdiction and establishment of jurisdiction

(a) Summarise each of the paragraphs in italics in your own words, using the terminology that has been underlined. For all the other terminology that is not underlined, you will need to use synonyms or different word categories (e.g. law-legal), but you cannot use exactly the same word. Names of parties, of companies and of people as well as dates and places are not underlined because you are free to use them.

1 JUDGMENT OF THE COURT (Third Chamber)

2 27 February 2014

3 (Request for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC)
4 No 44/2001 – Article 27(2) – Lis pendens – Article 24 – Prorogation of jurisdiction –
5 Establishment of jurisdiction of the court first seised by reason of appearance being
6 entered without objection by the parties or the adoption of a final judgment)

7 In Case C-1/13,

8 REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation
9 (France), made by decision of 19 December 2012, received at the Court on 2 January 2013,
10 in the proceedings

11 **Cartier parfums – lunettes SAS,**

12 **Axa Corporate Solutions assurances SA**

13 v

14 **Ziegler France SA,**

15 **Montgomery Transports SARL,**

16 **Inko Trade s. r. o.,**

17 **Jaroslav Matěja,**

18 **Groupama Transport,**

19 THE COURT (Third Chamber),

20 (...)

21 having decided, after hearing the Advocate General, to proceed to judgment without an
22 Opinion,

23 gives the following

24 **Judgment**

25 1 This request for a preliminary ruling concerns the interpretation of Article 27(2) of
26 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the
27 recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12,
28 p. 1).

29 2 *The request has been made in proceedings between Cartier parfums – lunettes SAS*
30 *(‘Cartier’) and Axa Corporate Solutions assurances SA (‘Axa assurances’) and Ziegler*
31 *France SA (‘Ziegler France’), Montgomery Transports SARL (‘Montgomery Transports’),*
32 *Inko Trade s. r. o. (‘Inko Trade’), Jaroslav Matěja and Groupama Transport, concerning*
33 *compensation for damage sustained by Cartier and Axa assurances as a result of the*
34 *theft of goods during an international transport of goods by road.*

35 (...)

36 **Dispute in the main proceedings and the question referred for a preliminary**
37 **ruling**

38 10 *Cartier entrusted the transport by road of cosmetic products to Ziegler France*
39 *between Genas (France) and Wickford (United Kingdom). Ziegler France subcontracted*
40 *the transport of those goods to Montgomery Transports, which itself subcontracted that*
41 *service to Inko Trade which was, in turn, replaced by Jaroslav Matěja.*

42 11 Jaroslav Matěja took charge of the goods at the warehouses of Saflog in Genas on 25
43 September 2007. During the night of 26 to 27 September 2007, at 00.30, in accordance
44 with the legislation in force concerning the length of driving times, the driver stopped to
45 rest at a service station in the United Kingdom. The next morning he noticed that part of
46 the consignment of goods had been stolen. The damage was estimated by Cartier’s
47 insurance company, Axa assurances, at EUR 145 176.08. Axa assurances paid Cartier EUR
48 144 176.08 by way of compensation.

49 12 *On 24 September 2008, Cartier and Axa assurances brought an action before the*
50 *Tribunal de commerce de Roubaix-Tourcoing (France) (Commercial Court, Roubaix-*
51 *Tourcoing) against Ziegler France, Montgomery Transports, Inko Trade and Jaroslav*
52 *Matěja seeking an order that they should be jointly and severally liable for payment of*
53 *the sum of EUR 145 176.08.*

54 13 Subsequently, a series of guarantee claims were brought before the same court by the
55 carriers in which their respective insurers intervened.

56 14 *The Tribunal de commerce de Roubaix-Tourcoing ordered all the proceedings to be*
57 *joined.*

58 15 *At the hearing on 28 October 2010, Ziegler France raised a plea of lis pendens, based*
59 *on Article 27 of Regulation No 44/2001, on the ground that it had previously brought an*
60 *action before the High Court of Justice (England and Wales), Queen’s Bench Division*
61 *(London Mercantile Court), United Kingdom, by document of 16 September 2008. As is*
62 *apparent from the file sent to this Court, Ziegler France lodged a claim form before the*
63 *High Court of Justice against Cartier, Saflog and Wright Kerr Tyson Ltd, a company*
64 *incorporated under the law of England and Wales, in order to determine liability and*
65 *calculate the damage sustained by Cartier as a result of the theft at issue.*

66 16 Cartier and Axa assurances claimed that that plea was inadmissible on the ground
67 that it had not been raised in limine litis. Prior to the hearing, Ziegler France had lodged
68 written submissions before the Tribunal de commerce de Roubaix-Tourcoing, relating to
69 the substance of the case, although under Article 74 of the French Code of Civil Procedure
70 procedural objections must be raised before any defence on the merits, failing which such
71 an objection must be dismissed as inadmissible.

72 17 Cartier and Axa assurances also claimed that, in addition to being inadmissible, the plea
73 of lis pendens was unfounded in so far as the jurisdiction of the High Court of Justice, as
74 the court first seised, had not been established within the meaning of Article 27 of
75 Regulation No 44/2001, and the two disputes did not concern the same subjectmatter or
76 the same parties.

77 18 By judgment of 6 January 2011, the Tribunal de commerce de Roubaix-Tourcoing held
78 that the plea of lis pendens raised by Ziegler France was well founded on the ground, in
79 particular, that Article 871 of the French Code of Civil Procedure allows procedural
80 objections to be raised orally.

81 19 In that connection, the Tribunal de commerce held that the High Court of Justice had
82 been first seised and that its jurisdiction had not been contested. Therefore, as regards the
83 dispute between Cartier and Axa assurances and Ziegler France, the Tribunal de
84 commerce held that it should decline jurisdiction pursuant to Article 27(2) of Regulation
85 No 44/2001 in favour of the High Court of Justice. As regards the other parties, the
86 Tribunal de commerce de Roubaix-Tourcoing decided to stay its proceedings pending the
87 judgment of the High Court of Justice.

88 20 The Cour d'appel de Douai (Court of Appeal, Douai) (France), in its judgment of 14
89 April 2011, upheld the judgment of the Tribunal de commerce de Roubaix-Tourcoing,
90 holding, in particular, that in the dispute between Cartier and Axa assurances and Ziegler
91 France, the conditions for lis pendens had been met and that that court had lawfully
92 declined jurisdiction in favour of the High Court of Justice. The Cour d'appel de Douai held
93 that there was no doubt that the originating application before the United Kingdom court,
94 lodged prior to the action in France, concerned the same transport, carried out from the
95 warehouses of Saflog on behalf of Cartier and that, even though only some of the same
96 parties were in both pending cases, it was undeniable that the issue of Ziegler France's
97 liability discussed before the High Court of Justice would have repercussions for
98 Montgomery transports, Inko Trade, Jaroslav Matěja and Groupama Transport.

99 21 Cartier and Axa assurances appealed against that judgment before the referring
100 court. Those parties claim *inter alia* that the Cour d'appel de Douai has misconstrued the
101 meaning and scope of Article 27 of Regulation No 44/2001 by holding that the
102 jurisdiction of the High Court of Justice was 'established' within the meaning of that
103 article as its jurisdiction has not been contested. Those companies argue that the
104 jurisdiction of the court first seised may be established only by a judgment from that
105 court explicitly rejecting its lack of jurisdiction or by the exhaustion of the remedies that
106 are available against its decision to assume jurisdiction.

107 22 It is apparent from the national file that the referring court considers that it is
108 undeniable that the High Court of Justice was first seised and that the conditions relating
109 to the same parties and subject-matter of the disputes are satisfied in the present case.
110 None the less, confronted with diverging academic opinion in France, the referring court is

111 unsure as to the scope of the expression ‘jurisdiction of the court first seised is established’
112 within the meaning of Article 27(2) of Regulation No 44/2001.

113 23 In those circumstances, the Cour de cassation decided to stay the proceedings and to
114 refer the following question to the Court:

115 *‘Must Article 27(2) of [Regulation No 44/2001] be interpreted as meaning that the*
116 *jurisdiction of the court first seised is established, if neither party has claimed that it lacks*
117 *jurisdiction or if the court has accepted its jurisdiction by a decision which is irrevocable*
118 *for any reason whatsoever, including the exhaustion of legal remedies?’*

(b) List, in bulletpoints, all the conditions that need to be met in order for the jurisdiction of the court first seised to be established, using the information provided in the following paragraphs:

1 44 Accordingly, it must be held that it is clear both from the overall scheme and the
2 purpose of Regulation No 44/2001 that, in order for the jurisdiction of the court first
3 seised to be established within the meaning of Article 27(2) thereof, it is sufficient, where
4 the court second seised does not have exclusive jurisdiction under that regulation, that the
5 court first seised has not declined jurisdiction of its own motion and that none of the
6 parties has contested that jurisdiction before or up to the time at which a position is
7 adopted which is regarded by national procedural law as being the first defence.

8 45 Having regard to all of the foregoing considerations, the answer to the question is that
9 Article 27(2) of Regulation No 44/2001 must be interpreted as meaning that, except in the
10 situation where the court second seised has exclusive jurisdiction by virtue of that
11 regulation, the jurisdiction of the court first seised must be regarded as being established,
12 within the meaning of that provision, if that court has not declined jurisdiction of its own
13 motion and none of the parties has contested its jurisdiction prior to or up to the time at
14 which a position is adopted which is regarded in national procedural law as being the first
15 defence on the substance submitted before that court.

16 On those grounds, the Court (Third Chamber) hereby rules:

17 Article 27(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction
18 and the recognition and enforcement of judgments in civil and commercial matters must
19 be interpreted as meaning that, except in the situation where the court second seised has
20 exclusive jurisdiction by virtue of that regulation, the jurisdiction of the court first seised
21 must be regarded as being established, within the meaning of that provision, if that court
22 has not declined jurisdiction of its own motion and none of the parties has contested its
23 jurisdiction prior to or up to the time at which a position is adopted which is regarded in
24 national procedural law as being the first defence on the substance submitted before that
25 court.