

## **Topic 1 Cross-border civil litigation**

### **Case study on ‘Jurisdiction in (consumer) contracts and torts’<sup>1</sup>**

#### **Case study**

W, a successful wine merchant who lives in Bordeaux, wants to purchase a new fountain pen. He intends to use it only for writing personal letters and poems in his holiday apartment in Madrid. From a trip to Portugal, he remembers the company C, which is statutorily seated in Lisbon and which distributes old-fashioned fountain pens.

C operates an international homepage with the domain name “.com”, which can be set to different languages, among others to French, and which precisely describes its individual products. Furthermore, there are directions to the company available in French, which describe the route from France to C’s company’s site as well as a telephone number with international prefix. The option to buy single writing utensils is, however, not available on the homepage, but it refers to several possibilities for making contact with C, in order to negotiate the individual design of the pen.

Although this homepage is unknown to W, he contacts C, whose address he has still filed from his journey, in December 2014 via email and reaches an agreement with an employee about purchasing a classically designed fountain pen with flower ornaments and a golden nib at a price of €1250. As he can combine it with a business trip, W himself sets out to pick up the pen from C in its selling point in Milan on 23 December 2014.

W instantly checks out the pen. It works perfectly, but has a major scratch on its left side. W is very displeased and demands a new delivery, but C insistently refuses.

#### **Question 1:**

Do French courts have international jurisdiction to decide this dispute? Would your answer be any different if (a) W wanted to use the pen in business as well as in his private life; or if (b) W did not reveal to C the use he wanted to make of the pen?

#### **Question 2:**

Since a German friend of W’s is a lawyer and offers to help W, he finally files a suit against C at the Amtsgericht (local court) in Berlin; both are of the opinion that this must be admissible as C also directs its activities to Germany in the same way it does to France. After the delivery of the statement of claim, C sends its statement of defence to the Amtsgericht in Berlin without objecting to the court’s jurisdiction. Later it insists that the Amtsgericht would not have jurisdiction. Is this correct? The Amtsgericht did not indicate any possible lack of jurisdiction to C.

Please see § 504 Code of Civil Procedure (German ZPO):

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<sup>1</sup>Developed by Prof. Gerald Mäsch, Chair for Private Law, Commercial and Business Law, Private International Law and Comparative law, Director of the Institute for International Business Law, University of Münster.

## Section 504

### Notification in the event the local court lacks jurisdiction

*Should the local court (Amtsgericht) lack jurisdiction, this being local jurisdiction or competence *ratione materiae*, it shall indicate this fact to the defendant prior to holding the hearing on the merits of the case, and shall likewise draw the defendant's attention to the consequences of entering an appearance on the merits of the case without filing a corresponding objection.*

### **Question 3:**

Assuming, the fountain pen visually does not show any scratches. C itself bought the pen from the manufacturer X. When W uses the fountain pen in his holiday flat the first time, the new pen spills red ink due to a leak in the nib. The ink spreads out over his shirt and jacket. W cannot remove the red stains himself. At which courts can W file a suit against C, claiming the cleaning costs for his clothes?

As W does not want C to benefit from any kind of 'home advantage', he is not willing to sue C in Portuguese courts. May he sue C in France?