

Abstract

Non-Contractual Obligations in Private International Law

This thesis deals with non-contractual obligations in private international law.

The most important law in this area is the Rome II Regulation on the law applicable to non-contractual obligations that applies since 11 January 2009. The Regulation creates a common regime of conflict of law rules for most civil and commercial non-contractual obligations.

The general rule is the law of the place of injury (*lex loci damni*). The rule is subject to two exceptions, the common habitual residence exception and a general escape clause based on the closer connection principle. Special rules are laid down for some non-contractual obligations, such as product liability, unfair competition and acts restricting free competition, environmental damages, infringement of intellectual property rights, unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*. However, in most cases, the parties may agree on the law applicable to the non-contractual obligations between them. Post-tort agreements may be made between all parties whereas pre-tort agreements are allowed only where all the parties are pursuing commercial activity.

Where the Rome II Regulation does not apply the courts will look to the relevant national legislation, which is the Private International Law Act. However, most provisions of the Act are now obsolete, since the Rome I and Rome II Regulations have replaced them. The draft of the new Private International Law Act is designed to be complementary to the Rome I and Rome II Regulations and regulates only the issues that fall out of their scope.

The Rome II Regulation does not prejudice the application of existing conventions laying down conflict-of-law rules relating to non-contractual obligations. Thus the Hague Convention on the law applicable to traffic accidents remains in force in some of the member states. The Rome II Regulation determines the law applicable to traffic accidents in the remaining states. This leads to co-existence of different sets of conflict-of-law rules within Europe.

The Rome II Regulation is a product of a compromise between the Parliament, the Council and Commission. The Regulation proves that it is difficult to reach

a satisfactory compromise between legal certainty and flexibility in order to do justice in an individual case, while fulfilling the criteria of simple and predictable rules. Nevertheless, in spite of its imperfections, the Rome II is an acceptable instrument that furthers the harmonization of conflict of laws in Europe.

Key Words: non-contractual obligations, Rome II, applicable law.