

*Chapter 2 | Lesson 1*

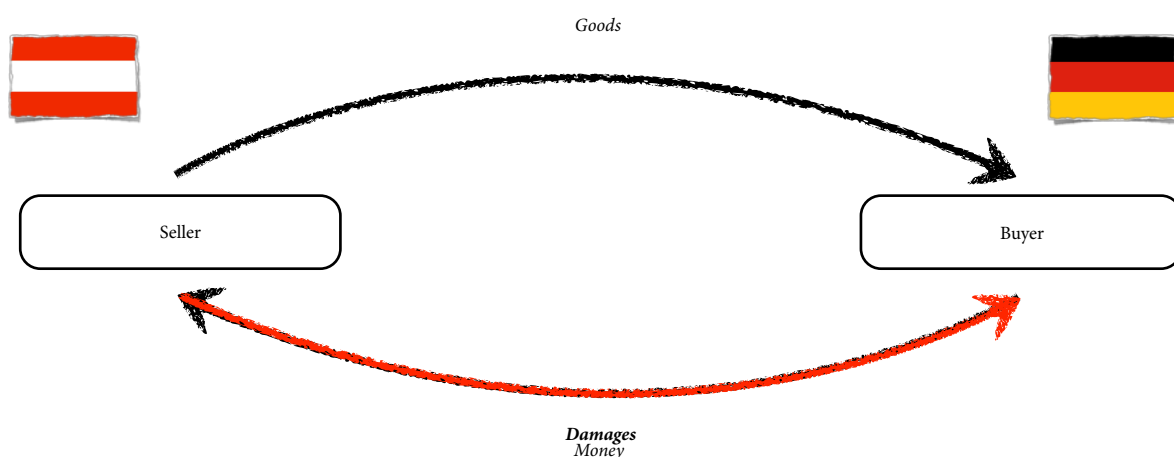
## **Conflict of Laws**

- disputes with a foreign **element**
- **three** types of questions arise
  - courts of which country have **jurisdiction**?
  - which law shall govern the dispute? (**choice of law**)
  - can the judgment be recognised and **enforced** abroad?

## Conflict of Laws I Conditions

- facts of the case involve private persons with **connection to more than one state**
- substantive law is **not uniform** (eg by international convention)

Seller A in **Austria** and buyer B in **Germany** make a contract for delivery of certain goods in Germany. The contract specifies the nature of the goods, as well as the price to be paid, but it does not designate the applicable substantive law, nor does it designate a specific court for the resolution of disputes which might arise. When A delivers the goods, B refuses to accept or pay for them.



International Case

Jurisdiction

Rules on International Jurisdiction

Internationally  
Competent Court

Application of  
Substantive Law

International Case

Jurisdiction

Rules on International Jurisdiction

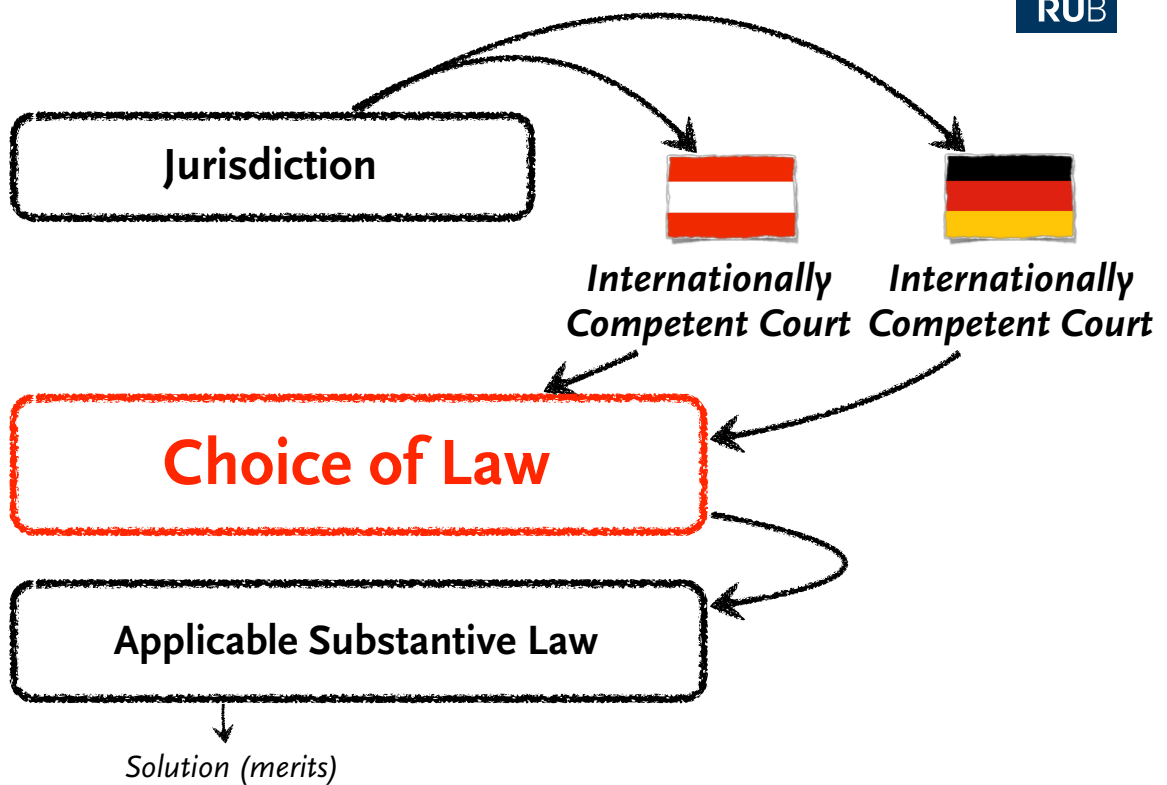


**forum shopping**

Solution I

Solution II

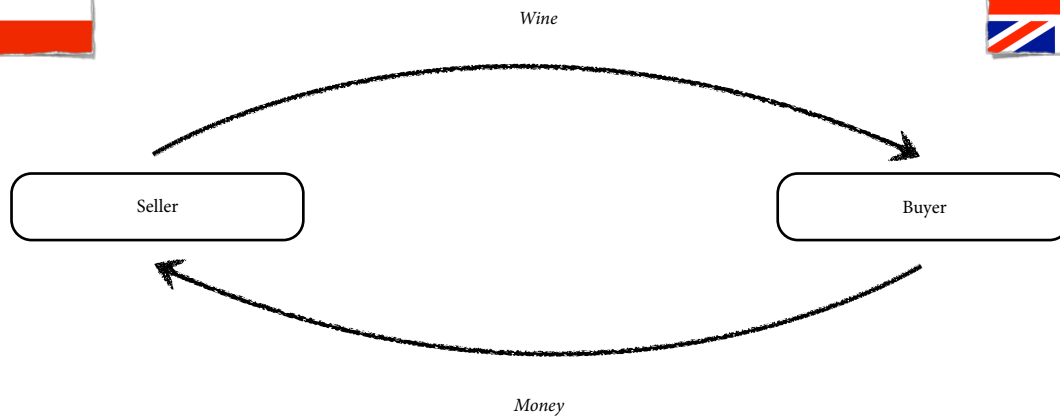
# International Case



Two companies enter into a contract of sale. The seller is domiciled in Austria; the buyer is domiciled in England. According to the contract of sale, the English company shall buy 200 bottles of Austrian wine. The Austrian company **delivers** the wine but the English company does not pay. The English company argues that the quality of the wine is not in accordance with the contract.

Which court is competent to hear the action of the Austrian company against the English Company?

Which law will be applied by this court?



## Download

### 060307 – Introduction to the International Dimensions of Law

5,0 ECTS credits

**Language of instruction:** English | **Instructor:** Dr iur Thomas Thiede, LLB, LLM (Email: mail(at)thomasthiede.info) | **Aims & Intended Outcomes:** As indicated by its title, this course will focus on an introduction to Comparative Law, Conflict of Laws, European Law and Public International Law (with a focus on all questions of the law applicable (choice of law) in cases with a foreign element). Participants should obtain basic knowledge in Comparative Law, Conflict of Laws, European Law and Public International Law; understanding of problems in mentioned areas of law and (some) competence in questions of the law applicable in cases with a foreign element. | **Texts and Materials:** A textbook specifically designed for this lecture is available at Sramek-Verlag → [LINK]. Materials containing all the the Legal Texts can be downloaded via this → [LINK].

<http://thomasthiede.info/Classes/texts.pdf>

# International Jurisdiction



## SECTION 1

### General provisions

#### Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

# International Jurisdiction



## Special jurisdiction

### Article 7

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
 (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

# International Jurisdiction

Art. 4 (*actor sequitur forum rei*)



Art. 7(1)(b) (*Place of Delivery*)



*lex fori*

Procedural Questions



Substantial Questions

# Choice of Law

# Choice of Law

REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 17 June 2008  
on the law applicable to contractual obligations (Rome I)

- para 4: most closely connected
- para 2: habitual residence of the party required to effect characteristic performance
- para 1 (a): sellers habitual residence

## Characteristic performance

- non-monetary performance
- agency contract – ....
- building contract – ....
- credit contract?

## Choice of Law

*Art. 4 (characteristic performance)* ←





## International Jurisdiction

Art. 2 (*actor sequitur forum rei*)



Procedural Questions

Art. 5, 1 (b) (*Place of Performance*)



*lex fori*

## Choice of Law

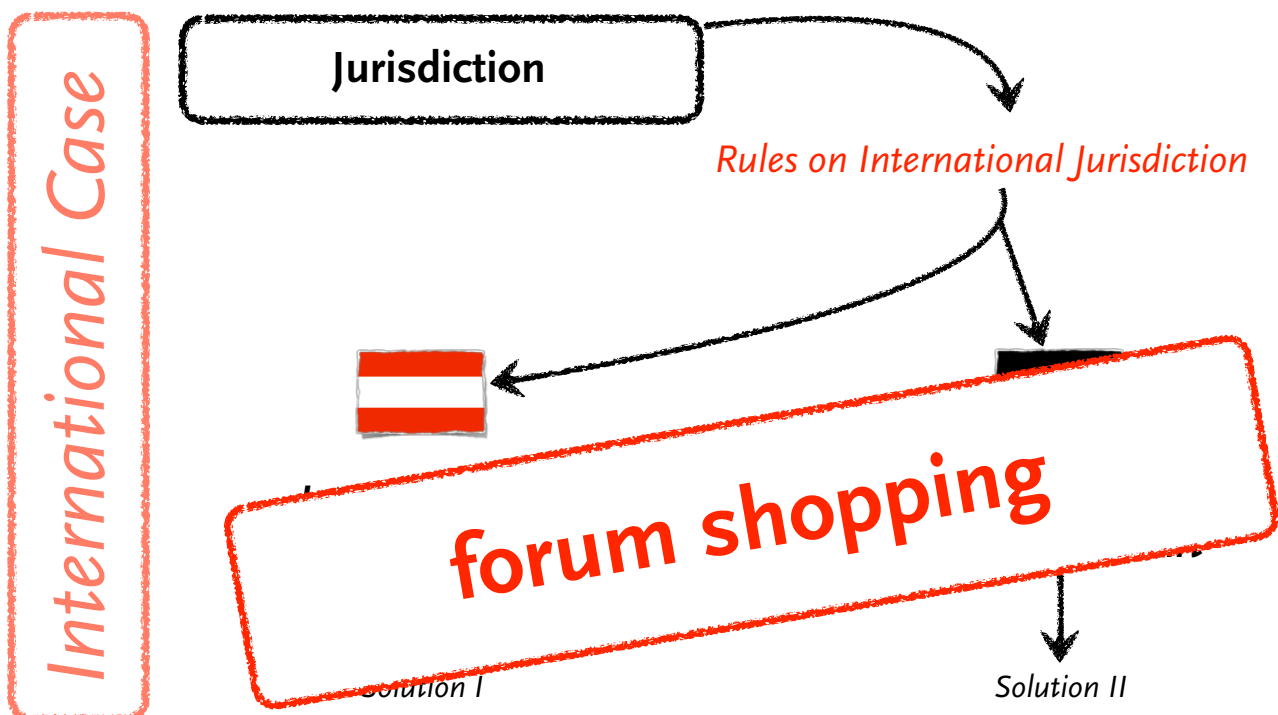


Substantial Questions

# Introduction to the International Dimensions of Law

## Cornerstones of Private International Law

- disputes with a **foreign element**
- **three** types of questions arise
  - courts of which country have **jurisdiction**?
  - which law shall govern the dispute? (**choice of law**)
  - can the judgment be recognised and **enforced** abroad?
- **set of rules** (so far)
  - Brussels I Regulation
    - determines **competent court**
  - Rome I Regulation
    - applicable **law**
- (some) **basic principles**
  - Brussels I Regulation (actor sequitur forum rei)
  - Rome I Regulation (closest connection)



*International Case*

