

Chapter 2 | Lesson 2

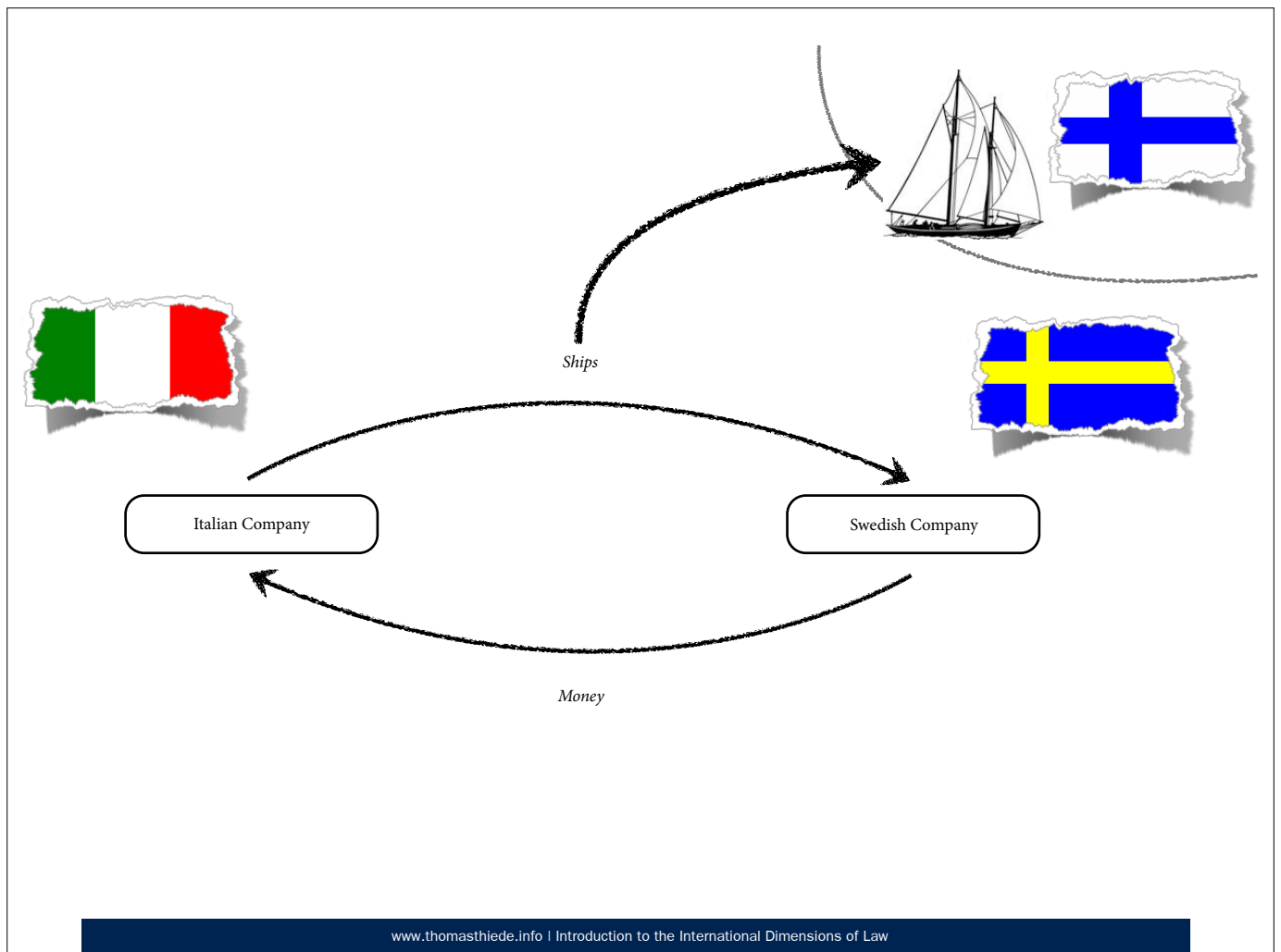
Connecting Factors | Sources of Law

(Review & Details)

A **Swedish company** and an **Italian Company** enter into a contract of **sale**. According to this contract the **Italian company** shall **deliver ships** and the Swedish company shall pay a certain purchase price. Thus, the Italian company is the seller; the Swedish company is the buyer. The Italian company shall deliver the ships **not to Sweden but to Finland**. The contract of sale contains neither a jurisdiction agreement nor a choice of law agreement. The Italian company actually delivers the ships to Finland. However, the Swedish company refuses to pay as the ships are not in accordance with the contract. The Italian company argues the opposite and insists that the Swedish Company is obliged to pay the purchase price.

Which court is competent to hear the case?

Which law will be applied by this court?



RUB

International Jurisdiction

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

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International Jurisdiction

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reference *fact setting* *connecting factor*

Connecting Factors

- existence of a certain connection
- connecting factor
- legally sufficient link between the (e.g.) forum state and the circumstances of a particular case

Art 4 Brussels Ia Regulation

Rule: Art. 4 Brussels Ia Regulation

PIL Issue: International Jurisdiction of Courts

Reference: “shall be sued”

Fact setting: “person domiciled in a Member State”

Connecting Factor: “in the courts of that Member State”

International Jurisdiction

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

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,

Art 7 Brussels Ia Regulation

Rule: Art 7 Brussels Ia para 1 lit (a)

PIL Issue: International Jurisdiction of Courts

Reference: "be sued"

Fact Setting: "contract"

Connecting Factor: "place of performance of the obligation in question"

Rule: Art 7 Brussels Ia para 1 lit (b)

PIL Issue: International Jurisdiction of Courts

Reference: "be sued"

Fact Setting: "the sale of goods"

Connecting Factor: "place where the goods were delivered"

subsidiary reference

International Case

Jurisdiction

Rules on International Jurisdiction



International II

forum shopping

Solution II

Choice of Law I Lex Specialis Rules

- ➔ uniform substantive law?
 - ➔ choice-of-law rules (European origin)?
 - ➔ choice-of-law (National origin)

Article 2

This Convention does not apply to sales:

(e) of **ships**, vessels, hovercraft or aircraft;



CONVENTION ON
Contracts for the
International Sale of
Goods (CISG), 1980

Article 3

For the purposes of the Convention, "goods" includes –

a) ships, vessels, boats, hovercraft and aircraft;



1955 Hague Convention
on the law applicable
to international sales of
goods

Signatory Staates

- Argentina,
- the Czech Republic,
- The Netherlands,
- Slovakia and
- Moldova

Choice of Law

Art 4 para 1 Rome I Regulation

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- (a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

Art 4 Rome I Regulation

Rule: Art. 4 Rome I Regulation

PIL Issue: applicable law to contracts

Reference: "the law applicable to the contract"

Fact setting: "sale of goods"

Connecting Factor: "law of the country where the seller has his habitual residence"

Art 19 Rome I Regulation

Article 19

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

Art 19 Rome I Regulation

Rule: Art. 19 Rome I Regulation

PIL Issue: habitual residence of companies | applicable law to contracts

Reference: "the law applicable to the contract | habitual residence of "

Fact setting: "companies and other bodies, corporate or unincorporated"

Connecting Factor: "place of central administration"

Art 19 Rome I Regulation

Subsidiary reference:

Fact setting: "performance is the responsibility"

Connecting Factor: "place of habitual residence of branch, agency or any other establishment"

Art 4 para 2 Rome I Regulation

Rule: Art. 4 para 2 Rome I Regulation

PIL Issue: applicable law to contracts

Reference: "shall be governed"

Fact setting: "the contract"

Connecting Factor: "where the party required to effect the characteristic performance of the contract has his habitual residence"

addendum: Escape Clause

Rule: Art. 4 para 3 Rome I Regulation

PIL Issue: applicable law to contracts

Reference: "shall be governed"

Fact setting: "the contract manifestly more closely connected with a country"

Connecting Factor: "law of manifestly more closely connected country"

Summary: How is a conflicts rule designed?

- **Connecting factors**
 - Reference
 - Fact Setting
 - Connecting Factor
- **single contact fact settings:** Art 4 para (1) Rome I Regulation
- **subsidiary references:** Art 7 para 1 lit (b) first limb Brussels Ia Regulation; Art 19 Rome I Regulation
- **open connecting factor** – “characteristic performance”: Art 4 para 2 Rome I Regulation
- **escape clause:** Art 4 (3) Rome I Regulation

Choice of Law I Lex Specialis Rules

- uniform substantive law
 - choice of law (European origin)
 - choice of law (National origin)