

# Consumer Protection in Private International Law

- Introduction: EU consumer policy
- Jurisdiction in consumer contracts: Section IV Brussels I regulation
- Choice of Law rules in consumer contracts: Rome Convention

# EU CONSUMER POLICY

- ▶ **INCREASE OF INTRA-COMMUNITY CONSUMER TRANSACTIONS**
  - More people moving from one State to another
  - Modern distribution methods (Tele-purchase, Internet)
  
- ▶ **CONFIDENCE IN THE MARKET**

“All the consumers rights provided by EC legislation and by domestic law will count for nothing if they cannot be effectively enforced”
  
- ▶ **FACILITATE ACCESS TO JUSTICE**

# ACCESS TO JUSTICE

## DIFFICULTIES FACED BY CONSUMERS

- Consumers are often not aware of their rights
- If they are, they may not know how to claim them
- Small amounts involved inhibit consumers from taking legal action
- They may have to litigate abroad
- Application of a foreign law
- Difficulties in finding a lawyer
- Sometimes the consumer may have to claim the recognition of the decision
- Different procedural rules from one State to the other, etc...

# JURISDICTION OVER CONSUMER CONTRACTS IN BIR

- How can the consumer be protected from a jurisdictional point of view?
  - 1) to establish special jurisdictional rules: *forum actoris*
  - 2) to limit party autonomy
  - 3) control jurisdiction in Recognition and enforcement
  
- Section IV of the BIR devoted to consumer protection

## SECTION IV OF THE BIR

- SCOPE OF APPLICATION: it only protects certain consumers
  - Who is a consumer?
  - What is a consumer contract?
  
- SPECIAL RULES ON JURISDICTION

# WHO IS A CONSUMER ACCORDING TO ART. 15 BIR?

- “Someone who makes the contract for a purpose which can be regarded as being outside his trade or profession”
- Autonomous, restrictive and teleological interpretation
  - the quality of “consumer” depends on his position in a giving contract: Benincasa v. Dentalkit
  - The consumer must be party to the proceeding: Shearson Lehman Hutton
  - A person who concludes a contract in part within and in part outside his trade or profession may not rely on the special rules of jurisdiction: Johan Gruber

# Consumer contracts covered by art. 15 BIR

- Contracts for the sale of goods on instalment credit terms
- Contracts for a loan repayable by instalments or any other form of credit made to finance the sale of goods
- “all other cases”...the contract has been concluded by
  - A person who pursues commercial or professional activities in the MS of the consumer’s domicile: **Doing business test**
  - Or by any means directs such activities to the consumer’s domicile: **Stream-of-commerce test**
  - And the contract falls within the scope of such activities

# Special jurisdictional rules

- Whenever the consumer acts as a plaintiff
  - the courts of the MS where the consumer is domiciled:  
forum actoris
  - the courts of the MS where the supplier is domiciled
- The supplier may only bring proceedings against the consumer in the courts of the MS where the consumer is domiciled
- Choice of court agreements are very limited. Only in the conditions laid down in Art 17 RBI.



# Conflicts of Laws in Consumer Contracts: Art. 5 Rome Convention

- Why should the consumer be protected from a conflicts of law perspective?
- How can the consumer be protected? Art 5 establishes a special conflicts of law rule which aims to protect the consumer

# ART. 5 OF THE ROME CONVENTION

- SCOPE OF APPLICATION: it only protects certain consumers
  - Who is a consumer? Same definition as in BIR
  - What is a consumer contract? Material scope of application
  - territorial conditions of application
  
- SPECIAL CONFLICT OF LAW RULE

# Consumer contracts covered by art. 5 RC

- **Limited material scope of application**
  - Supply of goods or services
  - contract for the provision of credit for that object.
  
- **Exclusions**
  - Contract of carriage: “package tours” covered
  - a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

# Territorial conditions of application

- Art 5 only protects the so-called “passive consumer”:  
three situations
  - 1) if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
  - 2) if the other party or his agent received the consumer's order in that country, or
  - 3) if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

# Special conflict of law rules

- **Limiting party autonomy:** comparison between the chosen law and the law of the consumer's residence
- **Special objective connection:** the law of the consumer's habitual residence

# DIFFICULTIES ENCOUNTERED

- Restricted material scope of application: only certain contracts are covered
- The active consumer (mobile consumer) is not protected

# POSSIBLE SOLUTIONS

- Consumer protection Directives set up rules which aim to grant the consumer (all consumers) the minimum protection afforded by the Directive
- Modification of Art 5: Commission Proposal for a Regulation Rome I