

Determining the applicable law in e-commerce transactions - with a focus on the Rome I Regulation

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Roadmap

I. Introduction

- A. Applicable Law
- B. Online contracts

I. The Rome I Regulation

- A. Structure
- B. General regime
- C. Consumer contracts

Part I

INTRODUCTION

Applicable Law

- PIL addresses three questions:
 - Jurisdiction
 - “Where can I sue?”
 - Choice of law
 - “What law applies to the case?”
 - Enforcement
 - “Is the resulting foreign judgment effective?”

Private International Law (2)

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Sources

- For **contracts**:
 - Rome I Regulation (Reg. No. 593/2008).
- For **torts**:
 - Rome II Regulation (Reg. No. 864/2007).
- For **divorce and legal separation**:
 - Rome III Regulation (Reg. No. 1259/2010).
- Other **sectorial instruments**:
 - E.g. the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary.

Sources (2)

- Further rules may also be found in substantive instruments, see e.g.:
 - Chapter I of the **Vienne Convention on Contracts for the International Sale of Goods**.
 - Chapter 8 of the **GDPR** (Reg. No. 2016/679).
 - Title X of the **EUTM Regulation** (Reg. No. 40/94).
 - Etc.

“Types” of online contracts

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- Contracts **induced** by the Internet



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HORAIRES

Lundi - mardi - mercredi :	09h00 - 00h00
Jeudi - vendredi :	09h00 - 02h00
Samedi :	12h00 - 02h00

“Types” of online contracts

- Contracts **induced** by the Internet
- Contracts **concluded over** the Internet

Book Now



+41 22 716 66 66



Gift Vouchers

Stay Social

English



Hotel

Rooms

Gastronomy

Wedding

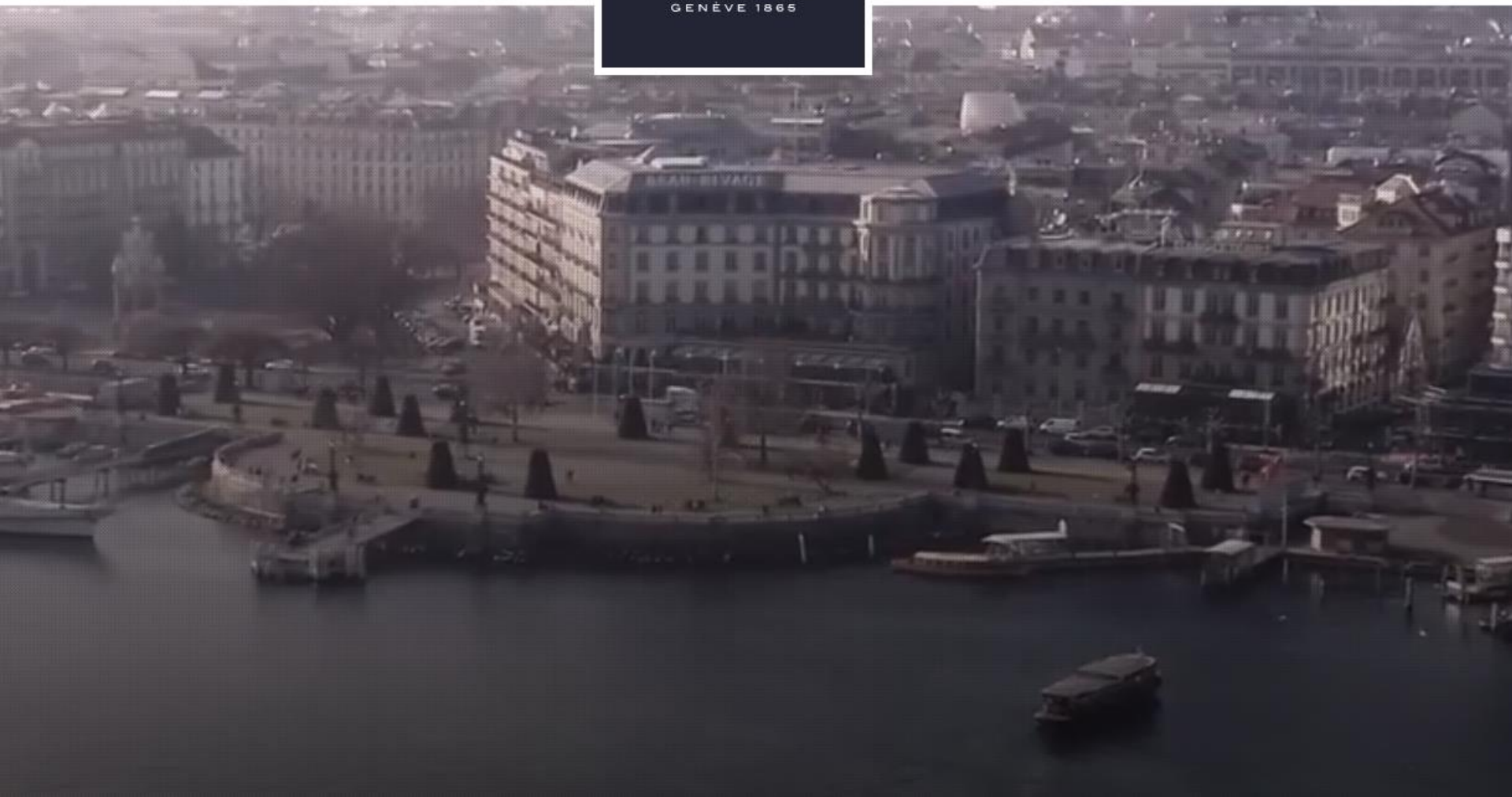
Beau Rivage
GENÈVE 1865

Events

Services

Offers

Contact



amazon.com[®]

The Amazon logo, a curved orange arrow pointing from the letter 'a' to the letter 'z', is positioned below the text.

“Types” of online contracts

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Part II

THE ROME I REGULATION

Structure

- General regime:
 - Freedom of choice (Art. 3).
 - Applicable law in the absence of choice (Art. 4).
- Special regimes:
 - Contracts of carriage (Art. 5).
 - Consumer contracts (Art. 6).
 - Insurance contracts (Art. 7).
 - Employment contracts (Art. 8).
- Common provisions (Arts. 9-22).

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General regime

- The applicable law is that of the country where **the performing party** has its **habitual residence** (Art. 4 RR1).
 - The seller in sales of goods contract (let. a).
 - The service provider in service contracts (let. b).

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- Choice of law clauses are **admissible** (Art 3 RR1).

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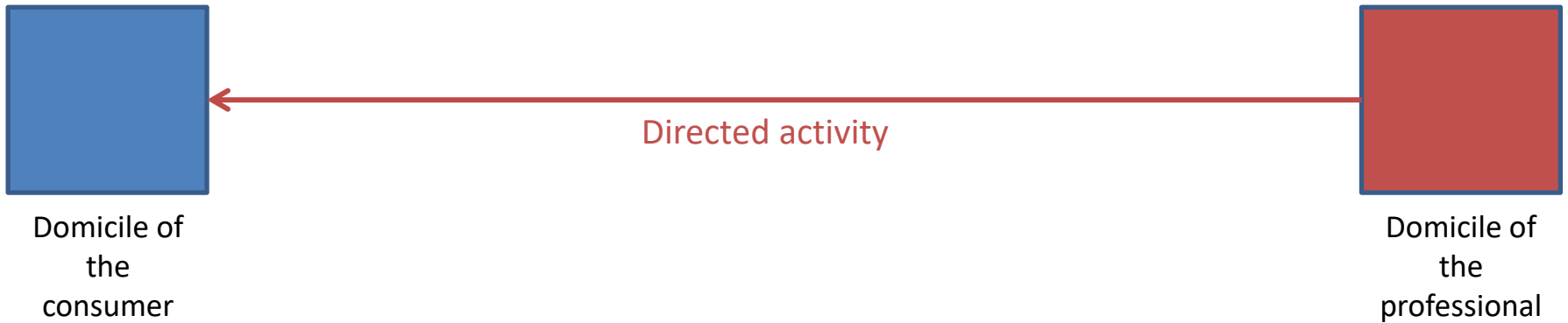
Purpose of the contract

- CJEU, 02.04.20, AU v. Reliantco Investments LTD, Case C-500/18, ECLI:EU:C:2020:264:
 - The contract must be “*concluded [...] for the purpose of a use other than a trade or professional use of the relevant goods or services*” (§ 50).
 - No requirement that the consumer “*behave in a particular way*” (§ 52).
 - **See also:** CJEU, 25.01.18, Schrems v. Facebook Ireland Ltd., Case C-498/16, ECLI:EU:C:2018:37.

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Directed activity



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CJEU, 07.12.10, Peter Pammer v Reederei Karl Schlüter GmbH & Co. v. KG, Joint Cases C-585/08 and C-144/09, ECLI:EU:C:2010:740

Directed activity (2)

- Application of a **targeting** test
- Criteria:
 - Language of the website
 - Accepted currencies
 - Possibility of contracting online
 - Directions for international clients
 - Nature of the business
 - (Geolocation?)

Directed activity (3)

- No requirement that the online advertisement **actually influenced** the consumer.
 - CJEU, 17.10.13, Lokman Emrek v Vlado Sabranovic, Case C-218/12, ECLI:EU:C:2013:666.
- No requirement that the contract be **concluded or performed** online.
 - CJEU, 06.09.12, Daniela Mühlleitner v Ahmad Yusufi and Wadat Yusufi, ECLI:EU:C:2012:542.

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Exceptions

- The protective regime does **not** apply to the contracts listed in Art. 6 (4) RR1, and notably:
 - To service contracts where the services are supplied in another country than the consumer's habitual residence.
 - For fiduciary services, see CJEU, 03.10.19, VfK v. TVP Treuhand, Case C-277/18, ECLI:EU:C:2019:827, §§ 42-54.
 - To “*rights and obligations which constitute a financial instrument and [those] constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings [...]*”.

Regime

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- The applicable law is that of the country where “*the consumer has his **habitual residence***” (Art. 4 (1) RR1).

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- **However :**
 - The **mandatory provisions** protecting the consumer under the law of the habitual residence still apply (Art. 6 (2) RR1).
 - A **pre-drafted** clause which omits to specify the above is unfair under Article 3(1) of Directive 93/13 on unfair terms.
 - In the e-commerce context, see CJUE, VfK v. Amazon EU Sàrl, Case C-191/15, ECLI:EU:C:2016:612.

The end!