

CHAPTER I

INTRODUCTION

A. Exploring Internet Challenges in Violations of Personality Rights: A Prelude to Private International Law

1. Crucial Role of Private International Law

The swift expansion of digital systems and the omnipresence of online activities have markedly escalated the volume and complexity of international operations.¹ With the digital realm facilitating seamless interactions across borders, parties often engage without considering the geographical location of others involved. The effects of internet-based activities can resonate across multiple jurisdictions at once, disregarding national boundaries, which is notably critical in issues like personality rights violations. While states can govern internet use within their borders, controlling online behaviour across different jurisdictions introduces compound challenges. The inherent universality of the internet, where content can be accessed from almost anywhere, complicates the regulation of activities tied to personality rights violations. Additionally, the necessity for internet service providers to comply with diverse legal regimes across different territories

¹ Pedro de Miguel Asensio, *Conflict of Laws and the Internet* (1st edn., Edward Elgar Publishing 2020) 1-58.

imposes a considerable strain, potentially leading to a service divide where global uniformity is unfeasible.

Private international law, or conflict of laws, serves to manage cross-border private interactions involving foreign elements. It seeks to reduce the uncertainty caused by multiple concurrent legal systems and to streamline their interaction. This includes clarifying which jurisdiction's courts are appropriate for adjudicating multi-national disputes and determining which laws apply to transactions or activities linked across various countries, particularly in cases relating to the violation of personality rights. Challenges arise, however, in pinning down the precise locations of online activities and establishing jurisdiction over cases involving personality rights violations. The universal feature of online interactions and the limitless expanse of the internet challenge the conventional conflict-of-law rules, traditionally tied to specific physical and geographical boundaries.²

The task of private international law in aligning various legal systems must be considered alongside its primarily national orientation.³ The lack of global harmonization of conflict-of-law rules and the absence of uniform international regulations for internet activities contribute to a climate of legal uncertainty at the international level. Consequently, jurisdiction and choice of law

² Pedro de Miguel Asensio, *Conflict of Laws and the Internet* (1st edn., Edward Elgar Publishing 2020) 1-58.

³ Alexander Gigante, 'Blackhole in Cyberspace: The Legal Void in the Internet' (1997) 15 *Journal of Computer and information Law* 413.

issues remain uncertain, dependent on where relief is sought, reflecting a broader challenge in international legal coordination.

2. International Jurisdiction

The concept of jurisdiction to adjudicate centres on the circumstances under which courts in a particular country are empowered to resolve claims or disputes stemming from situations and relationships that span across borders. This domain of private international law is crucial, predominantly moulded by the judicial system of the court presiding over the matter, regardless of the international scope of the disputes.⁴ When a court asserts jurisdiction over a claim, it applies its own procedural rules and the principles for choosing applicable laws. While the core issues of a case may be adjudicated under foreign substantive law, the procedural elements remain under the jurisdiction of the court's local law. Furthermore, this local law, also known as *lex fori*, guides the selection of applicable legal rules and restricts the incorporation of foreign statutes, especially through public policy exceptions that curtail their application.⁵

The Brussels Ia Regulation⁶ provides a consistent framework within the EU for handling jurisdiction, along with the recognition

⁴ Julia Hörnle, *Internet Jurisdiction: Law and Practice* (Oxford University Press 2021) 1-80.

⁵ Uta Kohl, *Jurisdiction and the Internet a Study of Regulatory Competence over Online Activity* (Cambridge Univ Press 2007) 1-30.

⁶ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

and execution of civil and commercial judgments, complemented by extra rules that address topics beyond its reach. Matters typically affected by internet law fall within its ambit as outlined in Article 1.⁷ These uniform rules aim to smooth out the internal market operations that might be hindered by discrepancies among national laws. However, the jurisdiction rules in this regulation are applicable not only in scenarios involving several Member States or significant links to the internal market but also in situations that connect with third countries.

Before addressing the special jurisdictional rules under Article 7 of the Brussels I-bis Regulation, it is essential to outline the general principle established in Article 4. Article 4 of the Brussels I-bis Regulation establishes the general jurisdictional rule, which dictates that a defendant domiciled in a Member State must be sued in the courts of that state. This principle ensures legal certainty and predictability by basing jurisdiction on the defendant's domicile rather than other more tenuous connections. The rule applies regardless of nationality, meaning that both EU citizens and third-country nationals domiciled in a Member State fall under its scope. Furthermore, Articles 62 and 63 clarify how domicile is determined, particularly for legal persons, whose domicile can be linked to their statutory seat, central administration, or principal place of business. Importantly, Article 4 also embodies the principle of *perpetuatio fori*, ensuring that a change in domicile

⁷ Uta Kohl, *Jurisdiction and the Internet a Study of Regulatory Competence over Online Activity* (Cambridge Univ Press 2007) 1–30.

after proceedings have commenced does not affect the court's jurisdiction.⁸ When the defendant is not domiciled in a Member State, jurisdiction falls back to national rules under Article 6, unless special jurisdictional grounds apply. This general rule serves as the cornerstone of jurisdictional competence under the Brussels I-bis framework, ensuring consistency and uniformity in cross-border legal disputes.

Article 7(2) of the Brussels I-bis Regulation establishes a special jurisdiction rule for tortious claims, allowing the claimant to sue in the courts of the place where the harmful event occurred or may occur. This provision deviates from the general rule under Article 4, which ties jurisdiction to the defendant's domicile, by offering an alternative forum when the wrongful act or its consequences extend beyond national borders. The CJEU has consistently interpreted Article 7(2) through the ubiquity principle, first introduced in the *Bier* case,⁹ distinguishing between two relevant connecting factors: the *Handlungsort* (place of the causal act) and the *Erfolgsort* (place where the damage is suffered). In cases of

⁸ In *DFDS Torline v. SEKO* (Case C-18/02), the ECJ emphasized that the Brussels Convention aims to enhance legal protection by ensuring that a claimant can easily determine the competent court, while the defendant can reasonably anticipate where they may be sued. The Court ruled that this objective would be undermined if, after a case falling under Article 5(3) had been brought before a court with jurisdiction, the defendant could strip that court of its competence simply by ceasing the wrongful conduct. Such an outcome would create legal uncertainty and potentially shift jurisdiction to another Contracting State, contrary to the Convention's goal of predictability and procedural stability. (Cf. *DFDS Torline*, para. 37, ECLI:EU:C:2004:74).

⁹ Judgment of the Court of 30 November 1976, *Bier*, Case 21-76, ECLI:EU:C:1976:166.

cross-border defamation or online personality rights violations, the Court has refined these principles to address digital harm, most notably in *Shevill*¹⁰ and *eDate/Martinez*.¹¹ In *Shevill*, the ECJ applied the mosaic principle, allowing claimants to bring actions in any jurisdiction where the defamatory material was distributed and caused reputational harm. However, each court could only award damages for the harm suffered within its jurisdiction. In *eDate/Martinez*, the Court introduced the centre of interest's test, holding that a claimant may sue for the entirety of the harm suffered in the Member State where their primary reputation is located. This approach enhances foreseeability and ensures a stronger connection between the claim and the forum. These developments highlight the balancing act within Article 7(2), ensuring access to justice for victims of torts while maintaining predictability for defendants.

3. Applicable Law

The vast reach of internet behaviour across borders introduces a high degree of legal uncertainty about which laws govern online activities. Without globally standardized substantive regulations for cross-border dealings, private international law typically relies on conflict-of-law rules to navigate these interactions.¹² The Rome

¹⁰ Judgment of the Court of 7 March 1995, *Shevill*, Case C-68/93, ECLI:EU:C:1995:61.

¹¹ Judgment of the Court (Grand Chamber) of 25 October 2011, *eDate*, Joined Cases C-509/09 and C-161/10, ECLI:EU:C:2011:685.

¹² Pedro de Miguel Asensio, *Conflict of Laws and the Internet* (1st edn., Edward Elgar Publishing 2020) 1-58.

II Regulation,¹³ specifying the law for non-contractual obligations across the EU, omits several matters that typically do not affect online torts.¹⁴ However, there is a notable exception regarding internet liability. Particularly, Article 1 §2 (g) of the Rome II Regulation explicitly removes ‘non-contractual obligations stemming from breaches of privacy and personality rights, including defamation’, from its coverage. As a result, in these areas, the determination of applicable law reverts to the national choice of law rules of each Member State, which remain crucial in deciding the legal framework for such cases.

B. Contextualizing the Research

1. Identification of the Problem

The central inquiry of this thesis is posed as follows: when any form of text, be it a blog post, a professional analysis, or a commentary on current events, is published online or offline, what is the applicable law if there are claims of personality rights violations? Furthermore, which judicial bodies are competent to handle such disputes? This dissertation seeks to address these fundamental questions concerning jurisdiction and applicable law. Embedded within these questions are nuanced challenges unique to

¹³ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

¹⁴ Pedro de Miguel Asensio, *Conflict of Laws and the Internet* (1st edn., Edward Elgar Publishing 2020) 1-58.

defamation and personality rights infringements. This discussion delves into the heart of these legal issues, highlighting the profound difficulties encountered in seeking a unified legal stance in a domain still dominated by divergent national interpretations.

2. Objective and Method

This study seeks to dissect and evaluate the instruments of private international law available to tackle the issue at hand. Specifically, it involves a comprehensive review of the legal frameworks of Austria, France, Hungary, Italy, and Spain, alongside their judicial decisions and relevant rulings from the CJEU. The dissertation examines the fragmentation of solutions arising from a lack of consensus in conflict of law rules. The analysis is structured from three distinct vantage points: firstly, through the lens of national tort laws of the selected jurisdictions concerning the protection of personality rights; secondly, by considering the domestic private national laws of these jurisdictions; and thirdly, through the framework of European private international law. At the tort law level, the focus is on how national legislations safeguard personality rights, specifically examining how tort law addresses infringements of these rights. In terms of applicable law, the study delves into the private international law regimes of the chosen jurisdictions to determine the relevant applicable law in cases involving personality rights violations. Regarding jurisdiction, the analysis delves into the Brussels Ia Regulation's legal framework and the evolution of CJEU case law. Additionally, this dissertation

takes into consideration the perspective of the common law jurisdictions, particularly the UK and USA, by conducting an in-depth analysis aiming to explore how jurisprudence interprets and applies these legal principles.

3. Overview on Issues and Structure

Chapter II provides an in-depth comparative analysis of how personality rights are safeguarded through tort law across five European nations: Austria, France, Italy, Hungary, and Spain. Each jurisdiction's approach is dissected to reveal how their distinct legal heritages—rooted in the German or French civil law traditions—influence their respective legal treatments of personality rights. For each country, the chapter first examines the tort law mechanisms that protect personality rights, detailing the specific torts recognized under national law, the legal thresholds for establishing liability, and the remedies provided. This includes a discussion of how honour, dignity, and reputation are legally protected, and the types of actions that can be pursued under tort law for infringements of these rights. Following the tort law analysis, the chapter analyses the private international law aspects of each jurisdiction. This includes an examination of how each country's legal system determines the applicable law for cross-border infringements of personality rights.

Chapter III shifts focus to the United Kingdom and the United States, examining the intricacies of defamation law as a critical

component of personality rights from both a tort law and private international law perspective. The analysis begins with a detailed look at the tort law of defamation in each country. It discusses the legal definitions of defamation, the prerequisites for proving a defamation claim, and the defences available to defendants in these jurisdictions. The chapter highlights significant judicial decisions that have shaped the understanding of defamation law, especially in relation to the balance between protecting individual reputations and upholding the freedom of speech. Building on this foundation, the chapter then explores how cross-border defamation disputes are handled in the UK and US. This includes a thorough analysis of the private international law rules applicable to jurisdiction and choice of law in defamation cases that involve foreign elements.

Chapter IV delves into the jurisdictional challenges associated with offline infringements of personality rights. It focuses on the legal frameworks that govern the adjudication of such cases, with particular attention to the jurisdictional rules that determine where legal action can be initiated. A critical examination of Article 7 §2 of the Brussels Ia Regulation is featured prominently, as this provision plays a crucial role in defining the geographical connection to the harm, either potential or actual. The chapter methodically examines the origins and manifestations of harm, considering the specific events that trigger such incidents and the locales where the impact of these events is felt or likely to be felt in the future. By concentrating on the landmark Shevill case, the discussion navigates through the complexities of jurisdiction in