



Applicable Law and Consumer Contracts from a German perspective



The criterion „to direct“

EC –decisions:

Peter Pammer vs. Reederei Karl Schlüter GmbH & Co. KG (C-585/08)

Hotel Alpenhof GmbH vs. Oliver Heller (C-144/09)

- Marketing (e.g. use of active and passive website)
- Spending of funds to direct foreign consumers to website
- Mentioning of international customers / services
- Use of telephone numbers with international prefix
- Use of higher domain-level
- Travel directions from other countries
- Use of foreign language
- [...]



Applicable Law

Art. 6 Rome-I-regulation

The definition of consumer is the same as in art. 15 Lugano Convention.

para 1: If there is no choice of law – in general – the law of consumer's habitual residence applies.

GERMAN LAW

para 2: A choice is possible: „[...] the parties may choose the law applicable [...]”

But unwise!



Art. 6 para. 2, sentence 2 Rome-I-regulation

“Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.”

Choosing another law will lead to a hybrid of the chosen law AND German consumer protection law!



German Consumer Protection Laws

Various tools to protect consumers

- special duties to inform
- special rights of withdrawal
- shifting or alleviation of the burden of proof
- used for some contracts (sales contracts, loans, insurances, distance teaching) or
- Situations in which a contract is closed (distance selling, door-to-door retailing, e-commerce etc.)

based on European law and will be similar to rules in other EU-countries

Control of General Terms and Conditions (GTC)

- almost all standard contracts are considered to be GTCs
- German law declares Terms and Conditions invalid if they are considered unfair
- Instead of the invalid term statutory law applies



German Law on Consumer Protection

When is a clause unfair?

- when such terms establish a significant imbalance between the rights and obligations of the contracting parties to the other party's disadvantage
- when they substantially differ from the rules provided by statute law
- if they are considered to be surprising in the respective context of an agreement, i.e. the other party would normally not expect such a clause within an agreement of the relevant kind
- if they are considered intransparent.



Thank you very much!