Table of Contents

List of Abbreviations 19

Introduction: International jurisdiction of courts in the digital age - A bird’s eye view 27

Chapter I: Background: four national perspectives on violations of personality rights 37
  A. Common understanding of basic concepts 38
  B. Four national perspectives 39
    I. Hungarian law 39
    II. German law 42
    III. French law 45
    IV. English law 49
    V. Differences in the national legal landscape 53

Chapter II: Background: characteristics of the Internet 55
  A. Geographical independence 56
  B. Geolocation tools 59
    I. Shortcomings of geolocation tools 60
      1. Weaknesses in technology 60
      2. Evasion of geolocation tools 61
      3. Additional considerations 63
    C. Actors in the digital world 64
    D. The Internet vis-à-vis the traditional media, especially the press 68

Chapter III: Mapping the legal landscape: the Brussels-Lugano Regime 71
  A. Background of the Brussels-Lugano Regime 71
    I. The Brussels Regime 72
    II. The Lugano Regime 76
    III. The Brussels-Lugano Regime in Hungary 79
## IV. Other developments

1. The Draft Regional Convention between the Western Balkan countries 82
2. The Judgments Project 83

## B. Governing objectives and underlying principles: focus on the persons

**I. The principle of legal certainty**

1. The principle of equality and uniformity of rights and obligations 86
2. Legal certainty as to the scope of the Brussels-Lugano Regime 87
3. Avoiding multiplication of courts and fragmentation of proceedings 90
4. The extent of national courts’ duties to examine jurisdiction 92

**II. The principle that disputes should be decided in an appropriate forum**

1. The principles of sound administration of justice and proximity 96
2. The principle that parallel proceedings should be avoided 97
3. The principle of party autonomy 98
4. The principle of protection of the weaker party 101

**III. Jurisdictional principles as bases for the liberal recognition and enforcement of judgments**

## C. General jurisdictional provisions

**I. Article 4: Actor sequitur forum rei**

1. Determination of domicile 106
2. A supplement to domicile: the last known domicile 107

**II. Article 5: Alternative grounds of jurisdiction**

**III. Article 6: (Inter)nationalism v eurocentrism**

## D. The arsenal of jurisdictional bases for violations of personality rights

**I. Article 4(1): Defendant’s domicile**

**II. Article 7(2): Jurisdiction in tort**

1. Violation of trade marks 107
2. Violation of copyright 108
3. Co-perpetrators 109

**III. Article 7(3): Criminal offence**

**IV. Article 7(5): Operation of a secondary establishment**

**V. Article 8(1): More than one defendant**

**VI. Article 25: Choice of court agreements**

**VII. Article 26: Uncontested voluntary submission**

12
# Table of Contents

Chapter IV: Jurisdiction in tort: a general note on Art 7(2)  
with particular regard to violations of personality rights  
\[130\]

A. Matters relating to tort, delict, or quasi-delict  
\[130\]
B. The place where the harmful event occurred or may occur  
\[132\]
   I. The place where the harmful event occurred  
   \[133\]
      1. The place of the event, which gives rise to and is  
         at the origin of the damage, occurred  
         \[136\]
         a) Peter Mankowski: *lex cause*  
         \[137\]
         b) Sebastian Kubis: imputation and procedural  
            valuations  
         \[137\]
         c) Isabel Roth: procedural valuations  
         \[138\]
         d) Peter Kaye: the original act  
         \[140\]
         e) The present author’s view: the original act  
            with particular regard to procedural principles  
         \[141\]
   2. The place where the damage occurred  
   \[144\]
 II. The place where the harmful event may occur  
 \[148\]
 III. Subsequent disappearance of the harmful event:  
      *perpetuatio fori* within Art 7(2)  
 \[149\]
C. Participation in the role of the plaintiff and the defendant  
\[151\]

Chapter V: Jurisdiction in offline violations of personality rights:  
the *Shevill* judgment  
\[153\]

A. Shevill in a nutshell  
\[153\]
   I. Factual and procedural background  
   \[154\]
   II. The questions referred  
   \[154\]
   III. The judgment of the ECJ  
   \[155\]
B. The place where the harmful event occurred  
\[155\]
   I. The place of the event, which gives rise to and  
      is at the origin of the damage, occurred  
      \[156\]
      1. The publisher’s establishment in the chain of  
         successive acts  
      \[156\]
      2. The publisher’s establishment as the place of domicile  
      \[159\]
   II. The place where the damage occurred  
   \[162\]
      1. The concept of distribution  
         \[163\]
         a) Distribution to the retailers  
         \[164\]
         b) Distribution to the readers  
         \[164\]
      2. The concept of injury to reputation  
      \[166\]
      3. Connection between the concepts of distribution  
         and injury to reputation  
      \[171\]
   C. The extent of jurisdiction  
\[171\]

I. Practicability 173
   1. Assessment of the defamation committed 174
   2. Determination of the extent of non-pecuniary harm 177
II. Compatibility with the governing objectives and underlying principles 178
   1. The wording of Art 7(2): is the limited extent of jurisdiction covered? 178
   2. The wording of Shevill: is local jurisdiction covered? 179
   3. Depriving the twin criteria of their inherent natures 180
      a) Equal treatment 180
      b) Optional character 181
      c) Causality and connectivity 182
   4. Libel tourism 184
      a) In general: libel tourism in the Brussels-Lugano States 184
      b) In particular: libel tourism in the wake of Shevill 185
   5. Procedural economy 187
   6. Interpretation in the light of the fundamental rights 188
   7. Rules of lis pendens and related actions 190
      a) Do parallel mosaic procedures involve the same dispute? 191
      b) Are the mosaic actions related? 194
      c) An adjunct problem: courts with different extents of jurisdiction 194
   8. Rules on the recognition and enforcement of judgments 195
   Conclusion and summary 198
D. Shevill and its impacts 198

Chapter VI: Jurisdiction in online violations of personality rights: reviewing 16 years’ proposals 201
A. Maintaining the twin criteria within Art 7(2) 201
   I. The place of the event, which gives rise to and is at the origin of the damage, occurred or may occur 202
      1. The place of the publisher’s establishment à la Shevill 202
      2. The place where the web server, to which the content was uploaded, is located 203
      3. The place where the content was uploaded 203
      4. Isabel Roth: three places under a rebuttable rule of presumption 205
   II. The place where the damage occurred or may occur 207
      1. Accessibility and actual access of the online content 207
         a) Accessibility of the online content 207
b) Actual access of the online content 209
c) An adjunct question: the use of geolocation tools 210

2. The targeting test 211
   a) The targeting test à la Pammer and Hotel Alpenhof 213
   b) Sui generis targeting tests 214
      aa) AG Cruz Villalón: the centre of gravity of the dispute 215
      bb) Isabel Roth: a qualified domestic connection 217
      cc) Michel Reymond: an objective targeting requirement 218
   c) An adjunct question: the target of the test 220

3. The victim’s forum 221

4. The draft Hague Judgments Convention: the place of the injury with special emphasis on the injured person’s habitual residence 222

B. Favouring a unitary approach within Art 7(2) 223
   I. Sebastian Rubis: the place of uploading and the victim’s domicile at the place of distribution 224
   II. Marc Leonhard: accessibility and domicile or certain degree of reputation together with proximity 225
   III. Benedikt Buchner: the aggrieved person’s centre of life 226
   IV. Andrew Dickinson: the place of the causal event 228

C. Proposals regardless of Art 7(2) 229
   I. European Publishers Council: removing the media from Art 5(3) of Brussels I 229
   II. Christopher Kuner: a flexible rule with the possibility of declining jurisdiction 231

Chapter VII: Jurisdiction in online (potential) violations of personality rights: the eDate and Martinez judgment 232

A. eDate and Martinez in a nutshell 232
   I. Factual and procedural background 233
      1. eDate Advertising 233
      2. Martinez and Martinez 233
      3. Factual differences 234
   II. The questions referred 235
   III. The judgment of the ECJ 235

B. The place of the harmful event à la Shevill between confirmation and revision 237
   I. The place of the causal event at the publisher’s establishment is confirmed 237
Conclusion and summary

II. The place of the damage is twice revised

1. Revision no 1: the victim’s centre of interests
   a) Reason no 1: worldwide accessibility
      aa) The targeting test
      bb) The actual access approach
      cc) Two adjunct questions: blocking measures and redistribution
   b) Reason no 2: serious nature of the harm
   c) Definition: the victim’s centre of interests
      aa) Forum actoris and actor sequitur forum rei: opposition or justified parallelism?
   d) Justification no 1: sound administration of justice
   e) Justification no 2: predictability

2. Revision no 2: the concept of accessibility

Conclusion and summary

C. The extent of jurisdiction

I. Observations complementary to the notes on the mosaic approach

1. Practicability
   a) Assessment of online violations of personality rights committed
   b) Measures for (potential) violations of personality rights

2. Compatibility with the governing objectives and underlying principles
   a) Further depriving the twin criteria of their inherent natures
   b) Libel tourism eased but to a certain extent minimised
   c) Even more certain application of rules of \textit{lis pendens} and grounds for refusal

Conclusion and summary

II. Unlimited extent of jurisdiction: a choice between the Brussels-Lugano States-wide and the worldwide harm

Conclusion and summary

D. Extending the application of the eDate and Martinez-approaches

I. Is there a need for technology neutrality?

II. Reversal of the roles: are the \textit{eDate} and Martinez-approaches suitable for individual online actors and legal person victims?

1. Individuals as online actors
2. Legal persons as victims
Chapter VIII: A proposal to reform the eDate and Martinez judgment

A. Virtues satisfying the governing objectives and underlying principles
   I. Consistency with legal certainty
      1. Guaranteeing equality and uniformity of the rights and obligations
      2. Avoiding multiplication of courts and fragmentation of proceedings
      3. Identifying jurisdiction in a rapid and certain way
   II. Determining the most appropriate court
      1. Consistency with the principles of sound administration of justice and proximity
      2. Supporting that the entire dispute is decided before a single forum
   III. Fostering mutual recognition of judgments
   IV. Strengthening the legal protection of persons established in the Brussels-Lugano States

B. Virtues serving practical purposes

Conclusions: International jurisdiction of European courts in the digital age - An insight view

Bibliography

Table of Cases

Table of Legislation

Table of International Treaties, Conventions and Other Documents

Table of Documents of the Hague Conference on Private International Law

Table of Official Studies and Reports

Appendices