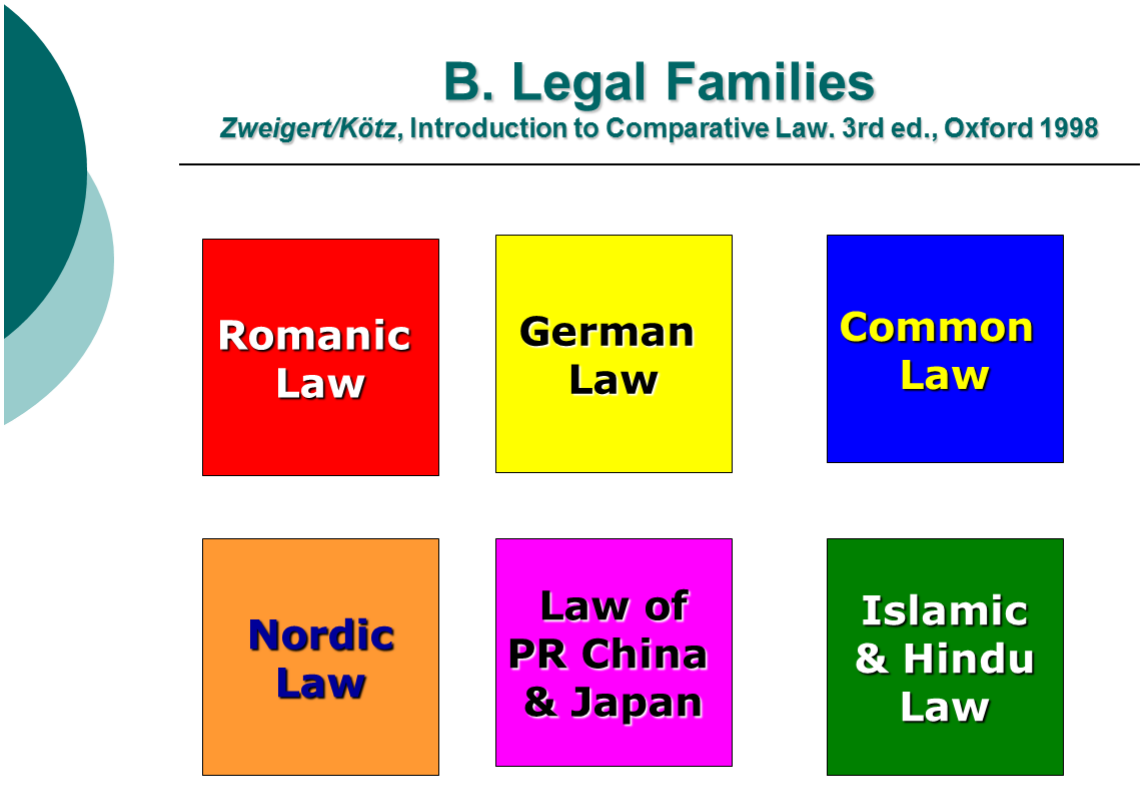
Comparative Private Law
HS 2015

Part I (Helmut Heiss)

The System of legal families as presented by Zweigert & Kötz, Introduction to Comparative Law, 3rd edition, Oxford 1998 (see attached chart), is sometimes critisized. Points of critisism are, i.a.:

• The system follows a eurocentristic view;
• the system follows a colonial view („social Darwinism“);
• the system is relative as to time and subject.

Explain!



Part II (Anna Plisecka)

Case 1

Glasgow Corporation v. Muir

Facts: Mrs. Alexander managed a public tea room. A group of 30-40 people asked her if they could take shelter and eat their food there. Mrs. Alexander agreed. A heavy tea urn was carried in by Mr. McDonald and a boy. As they entered the tea room, to which access was obtained by way of a small shop, Mr. McDonald inexplicably dropped his side of the urn and six children were scalded by hot tea. The corridor was 1,5 m wide, narrowing to 1 m, and a number of children were in there buying sweets. The plaintiffs alleged that Mrs. Alexander was negligent in allowing the urn to be carried into the tea room through a narrow passage where the children were congregated.

Held: The court of appeal allowed the claim. The House of Lords reversed that judgment.

Judgment: LORD MACMILLAN: "My lords, the degree of care for the safety of others which the law requires human beings to observe in the conduct of their affairs varies according to the circumstances. There is no absolute standard, but it may be said generally that the degree of care required varies directly with the risk involved. Those who engage in operations inherently dangerous must take precautions which are not required of persons engaged in the ordinary routine of daily life [emphasis added]. It is, no doubt, true that in every act which an individual performs there is present a potentiality of injury to others. All things are possible, and, indeed, it has become proverbial that the unexpected always happens, but, while the precept alterum non laedere requires us to abstain from intentionally injuring others, it does not impose liability for every injury which our conduct may occasion. In Scotland, at any rate, it has never been a maxim of the law that a man acts at his peril.
Legal liability is limited to those consequences of our acts which a reasonable man of ordinary intelligence and experience so acting would have in contemplation. "The duty to take care", as I essayed to formulate it in Bourhill v. Young ([1943] AC 92 at 104), "is the duty to avoid doing or omitting to do anything which may have as its reasonable and probable consequence injury to others, and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed." This, in my opinion, expresses the law of Scotland and I apprehend that it is also the law of England. The standard of foresight of the reasonable man is, in one sense, an impersonal test. It eliminates the personal equation and is independent of the idiosyncrasies of the particular person whose conduct is in question. Some persons are by nature unduly timorous and imagine every path beset with lions. Others, of more robust temperament, fail to foresee or nonchalantly disregard even the most obvious dangers. The reasonable man is presumed to be free both from over-apprehension and from over-confidence, but there is a sense in which the standard of care of the reasonable man involves in its application a subjective element. It is still left to the judge to decide what, in the circumstances of the particular case, the reasonable man would have had in contemplation, and what, accordingly, the party sought to be made liable ought to have foreseen. Here there is room for diversity of view, as, indeed, is well illustrated in the present case. What to one judge may seem far-fetched may seem to another both natural and probable. With these considerations in mind I turn to the facts of the occurrence on which your Lordships have to adjudicate… The question, as I see it, is whether Mrs. Alexander, when she was asked to allow a tea urn to be brought into the premises under her charge, ought to have had in mind that it would require to be carried through a narrow passage in which there were a number of children and that there would be a risk of the contents of the urn being spilt and scalding some of the children. If, as a reasonable person, she ought to have

had these considerations in mind, was it her duty to require that she should be informed of the arrival of the urn, and, before allowing it to be carried through the narrow passage, to clear all the children out of it in case they might be splashed with scalding water?… In my opinion, Mrs. Alexander had no reason to anticipate that such an event would happen as a consequence of granting permission for a tea urn to be carried through the passage way where the children were congregated, and, consequently, there was no duty incumbent on her to take precautions against the occurrence of such an event. I think that she was entitled to assume that the urn would be in charge of responsible persons (as it was) who would have regard for the safety of the children in the passage (as they did have regard), and that the urn would be carried with ordinary care, in which case its transit would occasion no danger to bystanders. The [plaintiffs] have left quite unexplained the actual cause of the accident. The immediate cause was not the carrying of the urn through the passage, but McDonald's losing grip of his handle. How he came to do so is entirely a matter of speculation. He may have stumbled or he may have suffered a temporary muscular failure. We do not know … Yet it is argued that Mrs. Alexander ought to have foreseen the … reasonable probability of an occurrence the nature of which is unascertained. Suppose that McDonald let go his handle through carelessness. Was Mrs. Alexander bound to foresee this as reasonably probable and to take precautions against the possible consequences? I do not think so."

Please read the facts and the judgement and answer following questions:

1. **What is the main topic of the judgement?**

2. **Please resume the judge's main arguments in your own words?**

3. **Which conditions have to be fulfilled for the liability to occur?**

4. **Analyze the case from the perspective of the aforementioned conditions.**

Case 2

Cass com 22 October 1996

Chronopost

Judgment: THE COURT: On the first appeal ground: - Under Article 1131 of the Civil Code;

- Whereas according to the judgment appealed against (Court of Appeal, Rennes, 1st Chamber B, 30 June 1993), the company Banchereau on two occasions handed to Chronopost, subrogated to the rights of SFMI, an envelope containing a bid in a tendering procedure; as those envelopes were not delivered before midday on the day following their dispatch, as Chronopost had undertaken to do. Accordingly, Banchereau brought an action for damages against Chronopost in respect of the loss sustained by it; as Chronopost relied on the clause in the contract limiting compensation for delay to the cost incurred by it in transporting the packet;

- Whereas in dismissing Bandereaus's claim, the court below found that, although Chronopost did not comply with its obligation to deliver the envelopes before noon in the day after the dispatch, its fault was not so serious as to preclude its reliance on the contractual clause limiting its liability;

- Whereas in so holding, the court of appeal infringed the above-mentioned provision; as Chronopost, a specialist in swift transport guaranteeing the reliability and speed of its service, under took to deliver the envelopes entrusted to it by Banchereau within a specified period; as owing to its failure to perform that fundamental duty, the contractual clause limiting liability, which contradicted the scope of the obligation entered into, was to deemed not to have been incorporated (repute non écrit) in the contract.

Please read the facts and the judgement and answer following questions:

5. **What is the main topic of the case?**
6. **Describe the doctrine underlying the reasoning of the court.**
7. **Describe the application of that doctrine in the present case.**
8. **In which European legal systems this doctrine is applied in which not?**

Part III (Alessandro Scarso)

1. **What are the main differences between European Directive 93/13 (or, alternatively, its transposition into Italian law) and the statutory provisions applicable to standard trade terms in Italy?**

2. **What provisions aim at ensuring that the protection granted by the European Directive 93/13 to consumers is effectively implemented?**

Judgment

1. By order of 5 May 1995, received at the Court on 9 August 1995, the Oberlandesgericht (Higher Regional Court), Munich referred to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), […]

2. Those questions were raised in proceedings between D. Srl ("D."), having its seat in Florence, and Mr B., an Italian national, relating to the validity of a franchising contract concluded between them.

3. According to the case-file relating to the main proceedings, in 1987 D. developed a chain of franchised shops in Italy specializing in the sale of dental hygiene products. In 1992 Mr B. concluded a franchising contract with D. with a view to setting up and operating a shop in Munich. In that contract D. authorized Mr B. to exploit the exclusive right to use the D. trade mark within a particular geographical area. D. further undertook to supply goods bearing that trade mark, to support him in various spheres, to carry out the requisite training and promotion and advertising activities and not to open any shop within the geographical area covered by the exclusive right.

4. For his part, Mr B. undertook to equip business premises at his own cost, to stock exclusively D.'s products, not to disclose any information or documents concerning D. and to pay it a sum of LIT 8 million as payment for the cost of technical and commercial assistance provided when opening the shop and 3% of his annual turnover. By reference to Articles 1341 and 1342 of the Italian Civil Code, the parties specifically approved a clause of the contract reading "The courts at Florence shall have jurisdiction to entertain any dispute relating to the interpretation, performance or other aspects of the present contract by separately signing it."

5. Mr B. set up his shop, paid the initial sum of LIT 8 million and made several purchases, for which, however, he never paid. In the meantime, he has ceased trading altogether.

6. Mr B. brought proceedings in the Landgericht (Regional Court) Munich I, where he sought to have the franchising contract declared void on the ground that the contract as a whole was void under German law. He also claimed that the sales contracts concluded subsequently pursuant to the basic franchising contract were void.

7. Mr B. argued that the Landgericht München I had jurisdiction […] since he had not yet started trading, he should be regarded as a consumer within the meaning of the first paragraph of Article 13 and the first paragraph of Article 14 of the Brussels Convention.

8. The Landgericht München I declined jurisdiction on the ground that the jurisdiction clause contained in the franchising contract was valid and that the contract was not a contract concluded by a consumer.

9. Mr B. appealed against that decision to the Oberlandesgericht München, which stayed proceedings and referred the following questions to the Court for a preliminary ruling:

(1) Is a plaintiff to be regarded as a consumer within the meaning of the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention even if his action relates to a contract which he concluded not for the purpose of a trade which he was already pursuing but a trade to be taken up only at a future date (here: a franchising agreement concluded for the purpose of setting up a business)?
[…]

The first question

10. The point sought to be clarified by the national court's first question is whether the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention must be interpreted as meaning that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time but in the future, may be regarded as a consumer.
[…]

11. As far as the concept of "consumer" is concerned, the first paragraph of Article 13 of the Convention defines a "consumer" as a person acting "for a purpose which can be regarded as being outside his trade or profession". According to settled case-law, it follows from the wording and the function of that provision that it affects only a private final consumer, not engaged in trade or professional activities (Shearson Lehman Hutton, paragraphs 20 and 22).

12. It follows from the foregoing that, in order to determine whether a person has the capacity of a consumer, a concept which must be strictly construed, reference must be made to the position of the person concerned in a particular contract, having regard to the nature and aim of that contract, and not to the subjective situation of the person concerned. […]

13. Consequently, only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically. The specific protection sought to be afforded by those provisions is unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character.

14. Accordingly, it is consistent with the wording, the spirit and the aim of the provisions concerned to consider that the specific protective rules enshrined in them apply only to

contracts concluded outside and independently of any trade or professional activity or purpose, whether present or future.

15. The answer to the national court's first question must therefore be that the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention must be interpreted as meaning that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time but in the future, may not be regarded as a consumer.

3. Who has issued the judgment? What elements allow to identify the court rendering such judgment?

4. Why should the "concept of consumer be strictly construed"?

5. May a person be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others?

6. The Court states that the consumer is the "party deemed to be the weaker party economically".

i. Is in such context the reference to "weaker party" used in a descriptive or normative meaning, i.e. as a descriptive or normative concept?

ii. What does such distinction rest on?

iii. Why is such distinction important in Contract law?

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Comparative Private Law
Model answers for the question posed by Prof. Heiss, Dr. Plisecka and Prof. Scarso

Part I - Prof. Heiss

Note

Points marked in **bold** are in general required to obtain the point, but not sufficient in every case.

Comparative Private Law - Helmut Heiss	**20 Pts Max.**
Eurcentrism	**5 Pts**
Eurocentrism is, at least to a certain extent, **inevitable for European scholars** due to their legal education.	**1 Pt**
Eurocentrism is even **justified** if a **book** on comparative law is writt**en for European readers** (**open focus** on European legal systems).	**2 Pts**
Eurocentrism must be **criticised** when a comparative work claims to provide a **global view**, but in fact focuses on Europe (**hidden focus** on European legal systems).	**2 Pts**

Colonialism	**6 Pts**
Under this aspect, the criticism of "**Eurocentrism**" is taken even **further**.	**1 Pt**
It is argued that Euro- (and/or American-)centrism is a result of **considering** European legal systems and/or the US-American legal system as **superior to others**, in particular traditional legal systems.	**2 Pts**
It is argued that this stance was based on the **expectation** that traditional legal systems would vanish under a form of "**Social Darwinism**", because societies would modernise and, consequently, **give up adherence to traditional legal rules** ("**survival of the fittest**", i.e. "modern" European/American laws); however, this **has not taken place in many societies**.	**3 Pts**
Relativism	**9 Pts**
Legal systems and even **cultures** are **subject to change** (**statutory law** may change **quickly**, **legal culture** only **gradually**).	**2 Pt**
Such change may **influence the classification** of a given legal system; for instance, **social and legal** change in former socialist countries have **changed their classification**; **Polish law, once** classified as a socialist legal system, is now classified as a **central European (civil law) system**.	**3 Pts**
Such change usually requires a considerably **long transition period**, during which the classification of such legal systems is not easy and may be **described as "transitional"** at best.	**2 Pts**
The same is true in relation to **substantive law**. It is possible that a given country belongs to **more than one legal family**, e.g. in contract and family law; or in constitutional and private law. Whilst a **comparativist must be aware** of this fact, it does **not** present a **problem in the classification process**.	**2 Pts**

Part II - Dr. Plisecka

I. Reguläre Prüfung

Case I, *Glasgow Corporation* v. *Muir* (10 points)

1. What is the main topic of the judgement? (max. 2 points)

- The tort of negligence, the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. (1 point)
- The standard of foresight of a reasonable man: the objective nature of the test of the rational man and the subjective element in application (it is left to the judge to decide what in the circumstances of the particular case the reasonable man would have had in contemplation). (1 point)

2. Please resume the judge's main arguments in your own words? (max. 2 points)

- The degree of care required varies with the risk (1 point)
- The liability only for consequences which reasonable man of ordinary intelligence and experience could foresee (1 point)
- The judge decides if in the circumstance of a particular case "the reasonable man" could/should have foreseen the consequences (1 point)
- The defendant (Mrs. Alexander) had no reason to foresee the accident as consequence of her granting permission to carry the urn (1 point)
- The defendant (Mrs. Alexander) was entitled to assume the urn would be in charge of responsible people (adult) and will be carried with ordinary care (1 point)
- The immediate cause of the accident was not carrying the urn, but losing the grip of its handle by Mr. McDonald (1 point)

3. Which conditions have to be fulfilled for the liability to occur? (max 3 points)

- The harm has to be reasonably foreseeable (the test of the reasonable man) (1 point)
- The relationship between plaintiff and defendant has to be sufficiently proximate; the proximity is not to be understood only physically (the neighbour principle). (1 point)

- Defendant owed a duty of care to the victim and the defendant committed a breach of that duty. It is fair, just and reasonable to impose a duty of care on the defendant. (1 point)

4. Analyze the case from the perspective of the aforementioned conditions. (max. 3 points)

- It is not put in question that the relationship was that of proximity (1 point)
- In deciding standard of care the court considers the magnitude of risk and foreseeability of harm. Discussed is the problem of foreseeability and the application of the test of the reasonable man (1 point)
- The requirement of foreseeability is not fulfilled (1 point)

Case 2 *Cass com 22 October 1996* ***Chronopost*** (10 points)

1. What is the main topic of the case? (max 2 points)

- Contract for transportation services, the transportation company didn't deliver the documents on time. (1 point)
- Failure to perform fundamental duty under the contract. (1 point)

2. Describe the doctrine underlying the reasoning of the court. (max. 4 points)

- The doctrine of cause: (1 point)
- The obligation for its validity requires a lawful cause, the cause the interest of the promisor (1 point)
- The assumption is that any step taken by a reasonably prudent person is dictated by a financial or moral interest (1 point)
- Art. 1131 c. civ.: An obligation without cause or with a false cause, or with an unlawful cause, may not have any effect. (1 point)
- Distinction between the cause and the object (1 point)

3. Describe the application of that doctrine in the present case. (max. 3 points)

- The defendant, Chronopost, invoked contractual clauses limiting compensation for delay (1 point)
- Such clauses are upheld by the courts unless the non-performance is due to serious fault or fraud, which didn't take place in the present case, but in the present case the clause limiting liability contradicted the obligation, therefore the clause is deemed not to have been incorporated (1 point)

- Chronopost, the transportation company, guaranteed to deliver the envelopes within the specified period, the on-time delivery was the fundamental duty under the contract. In consequence of non-performance the plaintiff, Banchereau, lost a chance to participate in a bid and brought action for damages (1 point)
- The duty to deliver on time was the cause of the promisee to enter into the contract (1 point)
- In consequence of the non-performance of the fundamental duty under contract the payment for the transport was without the cause (1 point)

4. In which European legal systems this doctrine is applied in which not? (0,5 point for each legal system, but max. 1 point)

The doctrine of cause is applied in Italian law.

It's not applied in German, Dutch or English law.

Part III - Prof. Scarso

1.) What are the main differences between European Directive 93/13 (or, alternatively, its transposition into Italian law) and the statutory provisions applicable to standard trade terms in Italy?

The following differences exist:

a.) in terms of the *subjective* scope of application, the European Directive 93/13 / Arts. 33 ff. Consumer Code are applied solely to contracts between businesses and consumers, whilst - as far as Arts. 1341 ff. CC are concerned - there is no *subjective* restriction on their scope of application (1 point);

b.) in terms of the *objective* scope of application, Arts. 1341 ff. CC apply only to standard trade terms, while the regulation on unfair terms in consumer contracts applies *also* to contracts drafted in advance by the business for *individual use*. Thus the *objective* scope of application of the European Directive 93/13 / Arts. 33 ff. Consumer Code is broader than that of Arts. 1341 ff. CC (as - obviously - also standard trade terms are contracts drafted in advance, whilst contracts drafted in advance for *individual use* are – by definition - not standard trade terms) (1 point).

c.) By far the most important difference between the regulation on standard trade terms (Arts. 1341 ff. CC) and the European Directive 93/13 / Arts. 33 ff. Consumer Code on unfair terms in consumer contracts is the different conceptual approach:

i. Art. 1341, paragraph 2, CC, and Art. 1342 CC provide *solely* for a *formal review* of the standard trade terms: so long as the "one sided" standard trade terms have been specifically approved in writing, their "unfairness" to the detriment of the adherent party does not have any direct importance (1 point);

ii. on the contrary, the European Directive on unfair terms (93/13) provides for a *substantive review*, i.e. for a court scrutiny of the regulatory balance of any term drafted in advance by a business in consumer contracts: any term which "*causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer*" is – as a matter of principle – void (1 point).

2.) What provisions aim at ensuring that the protection granted by the European Directive 93/13 to consumers is *effectively* implemented?

The European Directive 93/13 provides that "*Any term providing for the application to the contract of provisions of a non-EU-member country is void whenever it results in the non-application of the provisions of this Title, provided the contract has a closer connection with the territory of any EU-member country*". Clearly, such provision aims at preventing businesses from inserting a term in contracts entered into with consumers according to which the law of a non-EU member state is applicable which were not to protect the consumer from unfair terms. Such a provision is void wherever "*the contract has a closer connection with the territory of any EU-member country*" (1 point).

A similar purpose is inherent in the provision according to which associations representing consumers or businesses are entitled to sue a business that uses unfair *standard trade terms*, and may petition the court to enjoin such use with reference to terms determined to be unfair pursuant to this Title. By doing so, the European Directive 93/13:

a.) extends the standing to sue to associations of consumers or businesses. This is in the belief that even where an individual consumer or business does not have the economic interest to file an action to assert the unfairness of a term, several consumers – that is, an association of consumers or businesses – may have an interest (1 point);

b.) speeds up the time of *effective* implementation of the consumer protection with reference to unfair terms in consumer contracts by permitting associations of consumers or businesses to petition the court to enjoin the use of standard trade terms determined to be unfair (in other court judgments). In essence, where a certain term used by a business in its standard trade terms in consumer contracts has been considered "unfair" (in a different proceedings), an association of consumers or of businesses can seek a court order preventing other businesses from using the same unfair term (without having to wait for the court judgment - 1 point).

3.) Who has issued the judgment? What elements allow to identify the court rendering such judgment?

The judgment has been rendered by the ECJ.

Among the elements allowing to identify the ECJ are:

a.) the explicit reference to a preliminary ruling;
b.) the fact that the relevant question at law specific has been rephrased as an explicit question;
c.) the reference to a question involving *lato sensu* European law, namely the uniform interpretation of the concept of consumer;
d.) the reference to the fact that the question has been issued by – as is explicitly stated - a "*national court*" (up to 3 points).

4.) Why should the "*concept of consumer be strictly construed*"?

According to ECJ case law, the concepts used in the Brussels Convention, which may have a different content depending on the national law of the Contracting States, must be interpreted independently, by reference principally to the system and objectives of the Convention, in order to ensure that the Convention is uniformly applied in all the Contracting States.

This must apply in particular to the concept of "consumer" within the meaning of Article 13 et seq. of the Convention, in so far as it determines the rules governing jurisdiction.

The general principle is that the courts of the Contracting State in which the defendant is domiciled are to have jurisdiction and that it is only by way of derogation from that principle that the Convention provides for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Contracting State. Consequently, the rules of jurisdiction which derogate from that general principle cannot give rise to an interpretation going beyond the cases envisaged by the Convention. Such an interpretation must apply *a fortiori* with respect to a rule of jurisdiction, such as that contained in Article 14 of the Convention, which allows a consumer, within the meaning of Article 13 of the Convention, to sue the defendant in the courts of the Contracting State in which the plaintiff is domiciled (2 points).

Indeed, apart from the cases expressly provided for, the Convention appears hostile towards the attribution of jurisdiction to the courts of the plaintiff's domicile.

5.) May a person be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others?

Yes!, Such possibility flows from the definition of "consumer" and of "business": A consumer is a natural person who acts for purposes which are outside his business. On the contrary, a "business" is any, natural or legal person, public or private, who is acting for purposes related to his trade, business or profession.

Hence, depending on whether the natural person is acting for purposed falling within or – rather – outside his trade or profession, he may be regarded – respectively – as a business or a consumer (2 points).

6.) The Court states that the consumer is the "*party deemed to be the weaker party economically*".

i. Is in such context the reference to "weaker party" used in a descriptive or normative meaning, i.e. as a descriptive or normative concept?
ii. What does such distinction rest on?
iii. Why is such distinction important in Contract law?

ii.) In cases involving **normative concepts** their "*normative scope* **[…]** *must be determined on a base by case basis through assessment*". Precisely for this reason, normative concepts *of this kind are considered to require supplementary assessment*" ("*wertausfüllungsbedürftig*"), as a particularly high degree of indeterminacy is inherent in such *assessment* (1 point).

On the contrary, a descriptive concept exists whenever a concept is "*reduced to descriptive terms*" (1 point).

i.) The reference to "weaker party" is made by way of a normative concept. Indeed, the Court apparently believes that the assessment of the "economic weakness" of the contracting party will have to be carried out by referring to some sort of measurement of the "wealth" / economic situation of the involved party (2 points).

To convince oneself, suffice it to consider that the distinction at issue is arbitrary at least as much as that which were to identify the weakness of the consumer in the fact that the latter has less "experience", "organisation" etc., as opposed to the only relevant distinction (pursuant to the wording of the relevant provisions) related to the entering into the relevant contract in one's carrying out of a trade or profession (in which case such person is a business) rather that for purposed outside one's trade or profession (in which case the same person is a consumer).

iii.) A concept of "weakness" understood as a normative concept is *not* compatible with the principle of freedom of contract/contractual autonomy. Indeed, a court scrutiny would be admissible on the basis of any "diversity" whatsoever between the contracting parties, which would be consider as the "index" of the allegedly envisaged "weakness".

Indeed, freedom of contract does not rest on any alleged "parity" (irrespective of its meaning!) between the parties to a contract: it –rather –rests solely on the freedom to enter / refuse to enter into a contract. In other words, freedom of contract may not be understood, as a de facto power to influence the content of the contract and obtain beneficial or at least objectively equivalent conditions, but rather as the free decision to enter into the contract under certain conditions to which the other party agrees. In such perspective, neither of the two or more parties to a contract may conclude the Agreement under the conditions they wish, because each party may only conclude under the conditions consented to by the other. In this sense, neither of the two contracting parties may object that the other party has imposed any particular condition upon it (up to 2 points).