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Buying from the EU after Brexit



What we will cover today

1. Jurisdiction and applicable law
2. What substantive legal protections might be relevant?
3. Practicalities of dispute resolution
4. Protections under the EU/UK Trade and Co-operation Agreement (TCA)
5. Customs Charges under the TCA

Imagine this...

- Sam wants to buy a guitar. He sees a few websites which have some good deals.
- One of the sites (*guitars R us.com*) is based in Germany. It offers a range of guitars, including imports from the USA.
- The seller offers to ship to a range of EU and non EU countries. Reviews on the site include several people living in cities in the UK.
- Sam chooses a guitar priced at £365. The website refers to a £25 delivery charge to ship to the UK.



Jurisdiction and applicable law



Is the website “directing activities towards consumers in the UK”?

- Yes: UK law applies, UK courts have jurisdiction
 - (subject to choice of law clause)
- No: foreign law applies, private international law determines which court has jurisdiction
- Meaning of “directing activities”
 - Tests set out in case law –see *Pammer and Hotel Alpenhof* (CJEU C-585/08 and C-144/09); *Daniela Mühlleitner v Ahmad Yusufi* (CJEU C-190/11);
 - *George Bitar v Banque Libano-Francaise SAL* [2021] EWHC 2787 (QB) (applies *Pammer* in English context)
 - Essentially any evidence trader envisaged taking orders from consumers in the UK

What law applies? Rome I Regulation and Rome II Regulation (as retained EU law) govern applicable law

Breach of contract (Rome I Art 6)

- General rule is that consumer's law applies
- May choose law in contract (so need not be UK law)
 - But consumer cannot contract out of the "mandatory protections" given to consumers under the consumer's law
 - And can always assess fairness of contract terms under UK law, as long as contract has a "close connection" with the UK (s.74 Consumer Rights Act 2015)

Tortious harm (Rome II)

- General Rule -art 4
 - Law of the place where the direct damage occurred (not where the event giving rise to damage occurred, or indirect damage occurs)
 - Unless clear that the tort is manifestly more closely connected with another country (eg due to a pre-existing relationship, eg as set out in a contract, between the parties)
- Product liability -art 5
 - The law of the place where the damage occurred or
 - where the person suffering damage had their residence (if product marketed there)

What courts have jurisdiction?

Civil Jurisdiction and Judgments Act 1982 ss 15A to 15E

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- Section 15A(1) -UK courts have jurisdiction over “consumer contracts”. This includes:

“A contract which has been concluded with a person who—

(i) pursues commercial or professional activities in the part of the United Kingdom in which the consumer is domiciled, or

(ii) by any means, directs such activities to that part or to other parts of the United Kingdom including that part,

and which falls within the scope of such activities.”

- **Therefore a consumer has right to sue and be sued in the UK**

What do you think?

Is Guitars R us.com directing activities towards the UK?

What courts have jurisdiction?

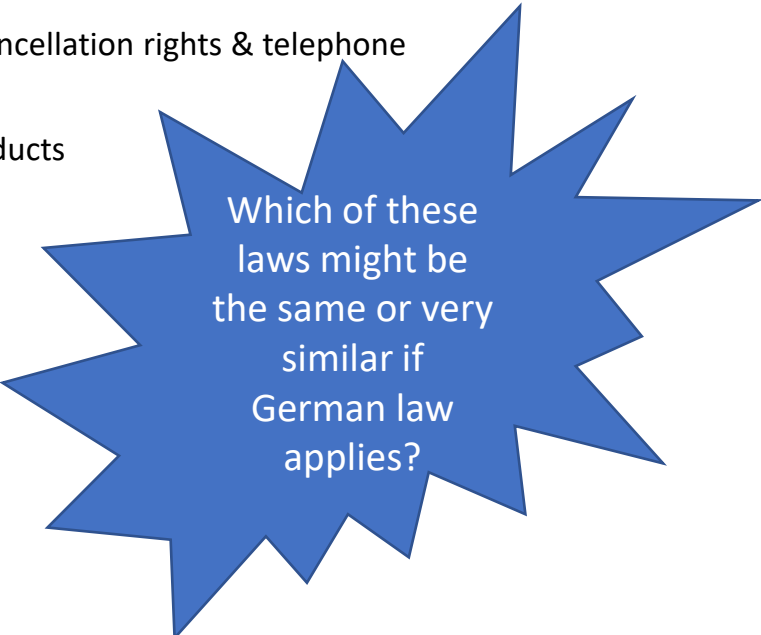
What law applies?

Relevant
substantive
laws



UK consumer law

- **Consumer Protection from Unfair Trading Regulations 2008** -covers advertising and other commercial practices
 - Description of product and price must be accurate
 - Price should be stated to include taxes **-so if a customs charge has to be paid, this should be included!** This is because the charge can be calculated in advance of posting.
- **Price Marking Order 2004** -governs price indications & requires prices to be given in Sterling
 - Price must include taxes (**so should include customs charges!**)
 - Rules on unit pricing
- **Consumer Contracts (Information, Cancellation & Additional Charges) Regs 2013** -covers key information, cancellation rights & telephone helplines
- **Consumer Protection Act 1987 & General Product Safety Regulations 2005** -cover defective / dangerous products
- **Consumer Rights Act 2015 Part 1** -covers quality of the item
 - Satisfactory quality, as described, fit for purpose
 - Right to reject, right to repair, replacement, refund
- **Consumer Rights Act 2015 Part 2** -covers unfair terms
- **Common Law** rules on contract -cover construction of the contract



Which of these laws might be the same or very similar if German law applies?

Practicalities of Dispute Resolution



Resolving disputes -what options do I have?

- Voluntary resolution by seller?
- Market place dispute resolution system
- Credit card provider liability (Consumer Credit Act 1974, s.75)
- Mediation by International Consumer Centre
- Report to TSS?
- Litigation in the UK
- Litigation in Germany

Pros and Cons of
each...?

Practical Litigation Issues

- *Jurisdiction issues*

- Service under CJA (if trader directs activities to UK)
- Service on Defendant within the UK
- Service under Companies Act at place of business in UK
- Permission to serve out (CPR rule 6.36)
 - Gateway
 - Claim has a reasonable prospect of success,
 - England is the proper place to bring the claim and
 - The court should exercise its discretion to order service out

- *Practicalities of service?*

- Have to serve according to local rules -so what amounts to effective service in Germany?

- *Practicalities of enforcement?*

- How will any order be enforced in UK?

- Any assets in the UK?

- Any assets held by intermediary in the UK?

- No longer able to rely on Brussels Regulation to get judgment recognised...

- Is there any provision to recognise UK judgments locally?

The UK/EU
Trade and Co-
operation
Agreement



Limited protections for “consumers”

1. **High level of consumer protection** and economic wellbeing is envisaged (preamble p.7)
2. **The UK and EU must**
 - a. adopt or maintain measures to proscribe fraudulent or deceptive practices (in the online space) (p.120 Digit 13. 1.a)
 - b. require traders to act in good faith and abide by fair commercial practices (in the online space), including prohibiting charging for unsolicited goods and services (p.120 Digit 13. 1. B)
 - c. require traders to provide consumers with clear and thorough information - including where they act through an intermediary service provider- of their identity, contact details, the transaction, including main characteristics of the product, full price including all applicable charges and applicable consumer rights. If there is an intermediary, they must provide this.
 - d. Grant consumers access to redress for breaches of their rights, including remedies for where a product is paid for but not delivered.
3. The only **definition of “Consumer”** provided in the Agreement is in DIGIT 5.2 and refers to “any natural person” there is no attempt to split up UK and EU consumers (it should be noted this definition only applies to the DIGIT section).
4. In respect of **air travel**, the Parties must maintain measures to protect consumers’ interests in air transport including (p.238 AIRTRN 22. 2)
 - a. Access to information
 - b. Assistance for the disabled
 - c. Re-imburement and compensation for denied boarding
 - d. Efficient complaint handling

Prohibits
customs charges
on goods
“originating” in
EU/UK: NB -the
rules on this are
very complicated
(TCA Art 37-67)

Must provide **proof of origin**

- What does “originating” mean?
 - raw materials from EU/UK or
 - sufficient processing/manufacture in EU/UK
- What is “sufficient processing?”
 - “Value added” processing (based on costs)
 - NOT -polishing, painting, shelling, simple assembly, components of more than 50% non originating (based on value)
 - CAN assemble products made in EU, and ship back to EU
 - Change in Commodity Code
 - Product/production specific rules
- For more detail see:
<https://www.gov.uk/guidance/check-your-goods-meet-the-rules-of-origin#products-you-make-using-materials-from-different-countries>

To claim preferential treatment for originating goods –must make Customs Declaration

- To declare you hold proof that the goods meet the rules of origin
 - Declaration by exporter (prescribed text added to invoice) or
 - Evidence based knowledge of importer
 - Waiver of need to hold evidence -if goods imported to UK worth **under £1,000**
- If seller does not claim preferential treatment, the buyer will end up paying a customs charge

What does this mean for
Sam’s Guitar purchase?

Customs

Customs Declaration

- Has to be made on anything you buy online, buy abroad and send back to UK or receive as a gift
- You may have to pay VAT, Customs Duty or Excise Duty
- Bill usually sent by courier -who holds the goods until you pay!

Has the Customs Declaration been made?

- **You** are meant to check that the sender has filled in the form correctly
- If you fill in the form yourself, this can delay getting your goods “by at least 4 weeks” (!)
 - You will need to do this if the sender writes “Goods to be declared by importer” on the declaration form.
 - You will be sent a customs declaration form to fill in and a letter explaining how to pay any tax or duty owed.

NB –to benefit from TCA Customs Declaration has to be made properly

For further information see: <https://www.gov.uk/government/collections/rules-of-origin-for-goods-moving-between-the-uk-and-eu>

Sending Gifts

- Customs Declaration must describe the goods as a gift
- Gift must be for a special occasion
- Sent between individuals
- Intended for personal use.
- If different gifts sent in 1 package - must be for different people, separately wrapped and listed on declaration with individual values!



Is due when Goods are sent *from outside UK to GB* (or outside UK & EU to Northern Ireland)

VAT is not charged on gifts worth less than £35

Usually collected by retailer (if worth less than £135)

But if not collected, OR if goods worth more than £135, you have to pay the delivery company:

- VAT is then calculated on the value of the goods + postage, packing & insurance + any duty owed.

Customs Duty -items posted

Applies UNLESS goods are exempt under UK/EU TCA (or other international trading agreement)

- Charged on all goods sent from outside UK if either –
 - excise goods or
 - worth more than £135.
- Duty calculated on price of goods + postage, packing & insurance
- Rate
 - 2.5% on **gifts** worth £135-£630 (but can be lower for some goods)
 - Rate on all other goods above £135 depends on the **type of good** and **where they are sent from** (!!).
- To calculate charge,
 - you need to know the Commodity Code for the good –
 - to get this you need to know details about product: how made, materials used, how it's packaged (!)
 - then use gov.uk Tariff Tool to calculate... <https://www.gov.uk/trade-tariff>.

Does Sam have to pay VAT
or Customs Duty on the
Guitar?



Excise Duty

Applies to alcohol
and tobacco sent
from outside the
UK

Ought to be
included in the
price -check with
retailer

If not included in
the price, liable to
be seized !

*What if you send the goods back
(eg in exercise of cancellation
right)?*

- There are forms to reclaim VAT & Customs Duty, depending on who delivered your goods (see Gov website)

What if Sam chooses to
exercise his cancellation
right?



Customs Duty -bringing things into the UK with you (NB rules different if arriving in N Ireland)

- No declaration or tax or duty if goods are below your personal allowance **AND**
 - for your own use or
 - a gift for someone else
- Must declare if
 - Goods exceed personal allowance or
 - goods are for commercial purposes (no personal allowance)
- May declare goods online from 5 days before arrival in UK, or at border
- Personal Allowance levels
 - Alcohol -4 litres (if 22%); 9 litres (upto 22%)
 - Tobacco (200 cigarettes)
 - Other goods -£390 value

How much duty must you pay?

- if exceed personal allowance -you pay tax and duty on the full value
- zero rate if exempt under UK/EU TCA
 - made/grown in EU
 - bought in EU country **AND**
 - bringing in from EU country
- If relying on UK/EU TCA -still need to declare -and have evidence)
 - If value under £1,000 -label is sufficient if says made/grown in EU
 - If value over £1,000 -need statement from seller indicating
 - Item
 - Place and date you bought it
 - Statement of origin (prescribed form of words)

Would Sam be better off if he travelled to collect his guitar?

Banned imports

You are not allowed to bring in some items, including

- Controlled drugs
- Offensive weapons
- Self defence sprays
- Endangered plants/ animals
- Rough diamonds
- Indecent materials
- Personal imports of meat and dairy from non EU countries

Any
Questions?

