

PRIVATE INTERNATIONAL LAW

- Compulsory Course
- Course Code: 144380 || 144360
- 8 ECTS credits
- Classes meet twice a week, on Mondays and Thursdays, for 150 m, from 15.30 pm to 18.15 pm, with a 15m break (15.30 pm – 16.45 pm; 17.00 pm – 18.15 pm)
- Location:
 - o Group C
 - Monday: Room 121 (Law Building)
 - Thursday: Room 132 (Law Building)
 - o Group D
 - Monday: Room 136 (Law Building)
 - Thursday: Room 121 (Law Building)

Classes are delivered in English

FACULTY

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Email is the best way to reach us. We will try and respond to emails within 24 hours.

COURSE DESCRIPTION

Should Lionel Messi be allowed to sue in the Portuguese courts where he considers he has been defamed in an article published by a Portuguese sports newspaper? What rules should a Portuguese court apply to a tort claim arising out of an environmental disaster caused by the sinking of a Greek-owned and Bahamas-operated oil tanker off the coast of Portugal? Should a judgment delivered by a German or Norwegian court be recognized in Portugal? Private International Law addresses the legal problems which *specifically* arise when a situation crosses borders. In particular, Private International Law provides for rules and principles which bear upon: (1) the international jurisdiction of courts, in the sense of the latter's competence to hear and determine a case ('Will a Portuguese court or a foreign court hear the case?'), (2) choice of law, ie the selection of a system of law, Portuguese or foreign, which a court should apply in deciding a case over which it has jurisdiction ('Should the court apply the law of the *forum* or the law of a foreign country?'), (3) the recognition and enforcement of judgments delivered by foreign courts.

Although legal systems, the Portuguese included, comprise many Private International Law rules of national origin, the situation in EU countries has evolved significantly under the influence of EU legislation. Given the so-called Europeanisation of Private International Law and the ensuing remarkable growth in the European regulation of this domain, Private International Law in EU countries 'is very much European law with a [national] law periphery, instead of [national] law with European legislative influences.' (Briggs, *The Conflict of Laws*, 2019). Reflecting this increasing

European dimension, the course addresses classical problems of Private International Law, such as characterisation or *renvoi*, from an European perspective. Further, it provides a comprehensive examination of core European Private International Law, including the Brussels I *bis*, Rome I and Rome II Regulations.

COURSE SYLLABUS

The Subject Matter: The Concept, Scope and Nature of Private International Law

1. Domestic legal relationships vs international relationships: issues specifically raised by international relationships
2. The scope of Private International Law: the determination of jurisdiction and applicable law and the recognition and enforcement of judgments

The Sources of Private International Law

3. National and supra-national sources
4. In particular, the Europeanisation of Private International Law

Choice of Law: Competing Methodologies

5. The traditional methodology
 - a. Multilateral choice of law rules
 - i. Basic principles
 1. Structure
 - a. Legal category
 - b. Connecting factor
 2. Multilateral choice of law rules v unilateral choice of law rules
 - ii. Conflicts justice v substantive justice
 - iii. Determining geographical proximity
 - b. Overriding mandatory provisions
 - i. Identifying overriding mandatory provisions
 - ii. Foreign overriding mandatory provisions
6. The American methodology (brief overview)

The Choice of Law Process

7. Characterisation
8. *Renvoi*
 - a. The problem stated
 - b. Possible solutions
 - c. *Renvoi* under EU law
9. Evasion of the law (*fraus legis*)
10. States with more than one legal system
11. International public policy (*ordre public*)
12. Foreign law
 - a. Applying choice of law rules: ex officio application vs permissive application; mixed systems
 - b. Proof of foreign law
 - i. Role of courts and parties in determining foreign law
 - ii. Means to determine foreign law

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 ('Brussels Ibis')

13. History, scope and other general features of the Regulation
14. The jurisdictional rules of the Regulation
 - a. General rule: defendant's domicile
 - i. Domicile of natural persons
 - ii. Domicile of legal persons

- b. Special rules of jurisdiction
 - i. Generally
 - ii. In particular, actions relating to a contract
 - 1. Autonomous interpretation
 - 2. Disputes about the existence of a contract
 - 3. The structure of article 7 (1)
 - a. Sale of goods contracts
 - b. Provision of services contracts
 - c. Article 7(1)(a) contracts
 - iii. In particular, actions relating to tort
 - 1. Autonomous definition of tort
 - 2. Concurrent actions in tort and contract
 - 3. Place where the harmful event occurred
 - iv. In particular, multipartite litigation and consolidated claims
 - c. Weak-party disputes: insurance, consumer and employment contracts
 - i. Protected categories: generally
 - ii. Consumer contracts
 - iii. Contracts for individual employment
 - iv. Insurance contracts
 - d. Exclusive jurisdiction
 - i. In particular, rights in rem and tenancies of immovable property
 - ii. In particular, corporations and legal persons
 - iii. In particular, entries in public registers
 - iv. In particular, registration or validity of intellectual property rights
 - v. In particular, proceedings concerned with the enforcement of judgments
 - vi. Reflexive application of the exclusive jurisdictional rules?
 - e. Agreements on jurisdiction ('Prorogation of jurisdiction' or 'Choice of *forum*')
 - i. Validity of agreement: consensus and form
 - ii. Validity of agreement: substance
 - iii. A reflexive effect for Article 25?
 - iv. The EU's accession to the Hague Convention
 - f. *Lis alibi pendens* and related actions
 - g. Applications for provisional or protective measures
15. The recognition and enforcement of foreign judgments
- a. Recognition
 - b. Enforcement

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('Rome I')

- 16. Introduction
- 17. Background to the Rome I Regulation
- 18. The scope and other general features of the Regulation
 - a. Material scope
 - b. Universal scope
 - c. Temporal scope
- 19. Party autonomy
 - a. Express choice
 - b. Inferred choice
 - c. *Dépeçage*
 - d. Limitations on parties' choice
- 20. Applicable law in the absence of choice
 - a. Specific contracts
 - b. Residual rule for other contracts
 - c. Escape clause
 - d. Closest connection
- 21. Weak-party contracts
 - a. Contracts of carriage of goods
 - b. Contracts of carriage of passengers

- c. Consumer contracts
 - d. Insurance contracts
 - e. Individual employment contracts
22. The scope of the applicable law
 23. Formal validity
 24. Capacity
 25. Overriding mandatory provisions

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')

26. Introduction
27. The scope and other general features of the Regulation
 - a. Material scope
 - i. 'Non-contractual obligation'
 - ii. 'Damage'
 - iii. Excluded matters
 - b. Universal application
 - c. Temporal scope
28. Law applicable to non-contractual obligations arising out of a tort / delict
 - a. General rule: article 4
 - i. *Lex loci damni*
 - ii. Common habitual residence
 - iii. Escape clause
 - b. Specific choice of law rules for particular non-contractual obligations (overview)
 - i. Product liability
 - ii. Unfair competition and acts restraining free competition
 - iii. Environmental damage
 - iv. Damage caused by infringement of intellectual property rights
 - v. Damage caused by industrial action
29. Freedom of choice and the general conflict rule
30. Unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*
31. Scope of the law applicable
32. Overriding mandatory provisions
33. Rules of safety and conduct

TEXTS AND MATERIALS

Required Course Reading

- For the first half of the semester, students shall refer to materials (mainly, literature extracts, cases, notes and slides) that are to be uploaded in instalments on the course Moodle page
- For the second half of the semester, core texts are listed below. While students might consider purchasing one or the other of the two indicated textbooks, there are a number of copies available at the UCP library.
 - o Michael Bogdan and Marta Pertegás Sender, *Concise Introduction to EU Private International Law* (4th edn, Europa Law Publishing 2019) [ISBN13: 9789089522085; circa 45 Sterling Pounds]
 - o Peter Stone, *EU Private International Law* (3rd edn, Elgar 2016) [ISBN 9781784715618; circa 32 Sterling Pounds]

Further Reading

- For additional reference, students may want to consider one or more of the textbooks listed below (and grouped according to jurisdiction). Please note that this reading is not required for successful completion of the course.

Portugal

- António Ferrer Correia, *Direito Internacional Privado* (Almedina 2000)
- João Baptista Machado, *Lições de Direito Internacional Privado*, 3rd edn (Coimbra 1985)
- Luís Lima Pinheiro, *Direito Internacional Privado* (vol I 2019, vol II 2015, vol III 2019)
- Rui Moura Ramos, *Estudos de Direito Internacional Privado da União Europeia* (Imprensa da Universidade 2016)

England and Wales

- Adrian Briggs, *The Conflict of Laws*, 4th edn (Oxford University Press 2019)
- L Collins et al, *Dicey, Morris and Collins on the Conflict of Laws*, 15th edn (Sweet & Maxwell 2015) *
- Pippa Rogerson, *Collier's Conflict of Laws*, 4th edn (Cambridge University Press 2013)

France

- Henri Batiffol and Paul Lagarde, *Droit international privé* (Sirey, vol I 1993, vol II 1983) **
- Pierre Mayer and Vincent Heuzé, *Droit international privé*, 11th edn (Lextenso 2014) *
- Horatia Muir Watt and Dominique Bureau, *Droit international privé*, 4th edn (PUF 2017) **

Germany

- Christian von Bar and Peter Mankowski, *Internationales Privatrecht* (Beck, vol I 2003, vol II 2019)
- Bernd von Hoffmann and Karsten Thorn, *Internationales Privatrecht*, 9th edn (Beck 2007) **

Spain

- Francisco Garcimartín Alférez, *Derecho Internacional Privado*, 5th edn (Civitas | Thomson Reuters 2019)

* Available at the UCP library

** A former edition is available at the UCP library

ASSESSMENT

- Class assignments & participation (see the next section)
- Mid-term closed book written test
- Final written exam (in English)
- Final oral exam (in English)

ATTENDANCE AND PARTICIPATION IN CLASS

Discussion and participation are heavily encouraged in this course. This means that it is each student's responsibility to come to class ready and willing to take part in group knowledge building. Students' in-class participation grade will reflect the level and quality of engagement in classroom discussion.

Students who attend fewer than two thirds of the classes delivered will not be admitted to the final examination and will be awarded a grade of 0 for the course (see art 10 (1) *Regulamento de Frequência e Avaliação de Conhecimentos*)