

Private International Law

UGRA_007760

Departments	Department of International, European Union and Comparative Law
Teaching Languages	English
ECTS	5
Teacher responsible	Tio Perez-Albert Verona - verona.tio@esade.edu

Course Goals

Specific learning objectives for students are:

- Knowing how to identify, distinguish and describe the areas covered by Spanish PIL.
- Knowing how to identify and distinguish the different regulatory levels for private international relationships which coexist under the Spanish system of PIL: national, European and International.
- Understanding the European rules of international jurisdiction and recognition and enforcement of judgments in civil and commercial matters of 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 (recast), or "Brussels I bis Regulation"; its relationship with the 2005 Hague Convention on Choice of Court Agreements, concluded by the EU as a member of the Hague Conference on PIL, and other International and multilateral Conventions, such as the 2007 Lugano Convention which extends the material scope of the Brussels regime to the EFTA States (Iceland, Norway and Switzerland). The student shall also understand when the Spanish national rules on international jurisdiction contained in the Ley Orgánica del Poder Judicial, as well as those concerning the recognition and enforcement of foreign judgments provided for under the Ley de Cooperación Jurídica Internacional en Materia Civil are applicable failing the application of the Brussels I bis Regulation or an International Convention.
- Identifying and understanding the different types of rules and legislative techniques applied by European judges to determine the law applicable to contractual and non-contractual obligations and contained in the following instruments: Rome I Regulation, No. 593/2008 (applicable law to contractual obligations) and Rome II Regulation, No. 864/2007 (applicable law to non-contractual obligations) as well as their relationship with other International and multilateral Conventions such as the CISG, the 1971 Hague Convention on the law applicable to traffic accidents and the 1973 Hague Convention on the law applicable to products liability. The student shall also understand when the Spanish national conflict of law rules contained in the Civil Code are applicable failing the application of the former instruments.
- Knowing the relationship between the rules of the different sectors covered by PIL: jurisdiction, applicable law and recognition and enforcement of foreign judgments.
- Understanding the European Court of Justice rulings, interpreting the above-mentioned regulations and their impact on the European (i.e. national) judges.

Teaching methodology

Teaching-learning methodology.

Each thematic section will be taught using lecture classes and participatory classes.

The participatory classes will be undertaken in small groups under the guidance of an assigned faculty member. The latter will also announce the set assignments on the course webpage.

Learning modalities.

1. Lecture classes in which the course content will be explained.
2. Practical classroom activities in which assignments will be completed in conjunction with discussions on the arguments explaining the solutions.

Description

Short description

Private International Law (PIL) is the branch of every legal system which has as its object private cross-border relationships, i.e., private relationships connected to more than one legal system. Due to the presence of an international element, three main questions arise: before which court may a party bring a claim (i.e., international jurisdiction), what is the applicable law to the merits of the dispute (i.e., applicable law) and whether a judgment may be recognized and enforced outside jurisdiction (i.e., recognition and enforcement of foreign judgments).

The Spanish system of PIL addresses these three main questions through rules which stem from different sources: national, conventional and European. On the one hand, and as a Member State of the European Union, Spanish courts are bound by European PIL the importance of which cannot be overstated. Since the Treaty of Amsterdam (1999), the European legislator has adopted 17 Regulations that deal with private cross-border relationships, and thus take precedence over the rules of PIL enacted by the Spanish legislator. On the other hand, Spain has concluded a considerable number of international conventions with third States, be it bilateral or multilateral, partially because of Spain being a member of the Hague Conference of PIL.

The course is focused on the Spanish system of PIL with special emphasis on contractual and non-contractual obligations.

Bibliography

- Bodgan/Pertegás, Concise Introduction to EU PIL (Book)
- , European Private International Law, Calvo-Caravaca/Carrascosa (Book)
- van Calster, European Private International Law. Commercial Litigation in the EU (Book)
- Calvo-Caravaca/Carrascosa, Tratado de Derecho internacional privado (Book)
- Font/Fontanelles/Gardeñes/Garriga, Lliçons de Dret internacional privat (Book)
- Garcimartín Alférez, Derecho internacional privado (Book)
- Esplugues/Palao, Derecho internacional privado (Book)

Content

#	Topic
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#	Topic
1	Introduction. What is PIL. Conditions for the existence of PIL. Object. Sectors: jurisdiction, applicable law and recognition and enforcement. Cooperation of authorities.
2	Sources of PIL. The relativity principle. Plurality of sources: national, conventional, European. The role of the Court of Justice of the European Union and the principle of autonomous interpretation of EU PIL.
3	Jurisdiction. Concept. Limits: Public International Law and Spanish Constitution. Different heads of jurisdiction. The Brussels system. Scope of application of Brussels I bis Regulation. Relationship with other conventions. The Lugano Convention II.
4	Heads of Jurisdiction. Exclusive jurisdiction. Choice of court agreements. Entering an appearance. Special jurisdiction in matters relating to a contract and in matters relating to tort, delict and quasi-delict.
5	Verification of Jurisdiction and Lis Alibi Pendens. Exceptional ex officio control of jurisdiction. Lis alibi pendens between the courts of different Member States, a Member State court and an EFTA State court, a Member State court and a third State court, and the Spanish courts and third State courts.
6	Recognition and enforcement of foreign judgments. Recognition and enforcement under Brussels I bis Regulation, the Lugano Convention II and Ley de Cooperación Jurídica Internacional en Materia Civil. Principles. Giving effect to a foreign judgement. Exequatur. Grounds for refusal of recognition and enforcement.
7	Applicable Law. The indirect and direct methods. The conflict of law rule: structure and function. Methodological problems: characterization, renvoi, public policy, reference to plurilegislative legal systems. Evidence of foreign law.
8	Contracts Rome I Regulation on the law applicable to contractual obligations. Objectives. Party Autonomy: conflictual v. material party autonomy. Limits: European mandatory rules and overriding mandatory provisions. Default conflict of law rules. Special conflict of law rules. Relationship with other international conventions.
9	Torts Rome II Regulation on the law applicable to non-contractual obligations. Objectives. Limited role of choice of law. Default rule for torts. Products liability. Relationship with other international conventions. Art. 10.9 Spanish Civil Code: applicable law to the infringement of personality rights.

Assessment

Tool	Assessment tool	Category	Weight %
Other	Active class participation	Retake and ordinary round	0.35%
Written and/or oral exams	Exam	Retake and ordinary round	0.65%

PROGRAMS

GBD20-Double Degree in Business Administration and Law (Undergraduates: Law)
GBD20 Year 4 (Mandatory)

GDL20-Double Degree in Law and Global Governance, Economics and Legal Order (Undergraduates: Law)
GDL20 Year 4 (Mandatory)

GED08-Bachelor in Law (Undergraduates: Law)
GED08 Year 1 (Mandatory)

GED20-Bachelor in Law (Undergraduates: Law)
GED20 Year 4 (Mandatory)