

Private International Law

UGRA_007760

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

Course Goals

Specific learning objectives for students are:

To know how to identify, distinguish, and describe the situations covered by Private International Law (PIL).

To know how to identify and distinguish the different regulatory levels that coexist within the Spanish system of PIL: national, European, and conventional.

To know and understand the relationship between the three core sectors of PIL: jurisdiction, applicable law, and recognition and enforcement of foreign judgments.

To know and understand the European rules on international jurisdiction and the recognition and enforcement of judgments in civil and commercial matters set out in 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), known as the Brussels I bis Regulation, and its relationship with other multilateral conventions, such as the 2007 Lugano Convention, which extends the material scope of the Brussels regime to three EFTA States (Iceland, Norway, and Switzerland).

To know and understand when the Spanish national rules on international jurisdiction contained in the Organic Law of the Judiciary (Ley Orgánica del Poder Judicial), as well as those concerning the recognition and enforcement of foreign judgments provided for in the Act on International Legal Cooperation in Civil Matters (Ley de Cooperación Jurídica Internacional en Materia Civil), are applicable in the absence of the Brussels I bis Regulation or an international convention.

To know and understand the plurality of methods and techniques that coexist

under the sector of the applicable law, with a particular emphasis on the conflict of law rule, its technical problems and operating rules.

To know and understand the supranational instrument which unify rules under the sector of the applicable law, that is: Rome I Regulation on the law applicable to contractual obligations, the CISG, Rome II Regulation on the law applicable to non-contractual obligations, and the Hague Conventions of 1971 and 1973 on the law applicable to traffic accidents and products liability, respectively.

To know and understand when the national conflict-of-law rules contained, essentially, in the Spanish Civil Code are applicable in the absence of the application of the aforementioned instruments.

To know and understand the rulings of the European Court of Justice interpreting EU PIL and to be familiar with its landmark cases.

Previous knowledge

Private law, civil procedural law, Public International Law and EU Law.

Teaching methodology

The course will be taught through lectures and practical sessions.

The continuous assessment consists of three (3) practical sessions and accounts for 40% of the final grade. These practical sessions will be undertaken in small groups under the guidance of an assigned faculty member.

In the event of a justified absence from one or more of the practical sessions, the weighting of the continuous assessment will be adjusted proportionally as follows:

- i) Attendance at two practical sessions: continuous assessment will account for 25% of the final grade, while the final exam will account for 75%.
- ii) Attendance at one practical session: continuous assessment will account for 15% of the final grade, while the final exam will account for 85%.

Unjustified absence from a practical session will result in a grade of zero (0) for that session.

The continuous assessment grade will only be combined with the final examination grade if the student obtains a minimum mark of 4 on the final exam.

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), which law is applicable to the merits of the dispute (i.e., applicable law) and whether a judgment given by the courts of a State may be recognized and enforced outside that 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 whose importance cannot be overstated. Since the Treaty of Amsterdam (1999), the European legislator has adopted numerous 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's membership in the Hague Conference on Private International Law.

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

Bibliography

Bouza/Garcimartín/González Beilfuss/Virgós, *Legislacion básica de Derecho internacional privado*, Tecnos (Book)

Fernández Rozas/Arenas/de Miguel, *Derecho de los Negocios Internacionales*, Iustel (Book)

Bodgan, M., Pertegás, M., *Concise Introduction to EU PIL*, Europa Law Publishing (Book)

Calvo-Caravaca, A.-L., Carrascosa, J., *European Private International Law*, Comares (Book)

van Calster, G., *European Private International Law. Commercial Litigation in the EU*, Hart (Book)

Font, A., Fontanelles, J.M., Gardeñes, M., Garriga, G., *Lliçons de Dret internacional privat* (Book)

Garcimartín Alférez, F.J.; Sánchez Fernández, S., *Derecho internacional privado*, Civitas (Book)

Biavati, P., Lupoi, M.A., *European Judicial Cooperation in Cross-Border Litigation*, Bologna University Press (Book)

Content

#	Topic
1	Introduction. What is PIL? Conditions for the existence of PIL. Object. Sectors: Jurisdiction, Applicable Law and Recognition and Enforcement of Foreign Judgments.
2	Sources of PIL. The relativity principle. Plurality of sources: national, conventional, European. The "communitarization" and "europeanization" of EU PIL. The EU: a member of The Hague Conference on Private International Law.
3	Jurisdiction. Concept. Limits. Different heads of jurisdiction. The Brussels system. Scope

#	Topic
3	of application of Brussels I bis Regulation. Relationship with other conventions. The Lugano Convention II.
4	Applicable Law. Plurality of methods and techniques. The conflict of law rule: structure and function. Methodological problems: characterization, renvoi, public policy, reference to plurilegislative legal systems. Evidence of foreign law. The Choice of Law of Contracts. The Rome I Regulation on the law applicable to contractual obligations. Choice of Law and limits to party autonomy: overriding mandatory rules and public policy. Default conflict of law rules.
5	Heads of Jurisdiction, Verification of Jurisdiction and Parallel Litigation. Exclusive jurisdiction in matters relating to rights in rem in immovable property and tenancy agreements of immovable property. Choice of court agreements and entering an appearance. Verification of jurisdiction and Parallel litigation. Special jurisdiction in matters relating to a contract and in matters relating to tort, delict and quasi-delict.
6	Recognition and enforcement of foreign judgments. Recognition and enforcement under Brussels I bis Regulation, the Lugano Convention II and the Ley de Cooperación Jurídica Internacional en Materia Civil. Principles. Giving effect to a foreign judgement. Exequatur. Grounds for refusal of recognition and enforcement.

Assessment

Tool	Assessment tool	Category	Weight %
Other	Three practical sessions	Retake and ordinary round	40.00%
Written and/or oral exams	Exam	Retake and ordinary round	60.00%

PROGRAMS

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

GBD23-Double Degree in Business Administration and Law (Undergraduates: Law)
GBD23 Year 4 (Mandatory)

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

GDL23-Double Degree in Law and Global Governance, Economics and Legal Order (Undergraduates: Law)
GDL23 Year 4 (Mandatory)

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