

Private International Law

Code: 102259
ECTS Credits: 9

Degree	Type	Year	Semester
2500786 Law	OB	4	1

The proposed teaching and assessment methodology that appear in the guide may be subject to changes as a result of the restrictions to face-to-face class attendance imposed by the health authorities.

Contact

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Use of Languages

Principal working language: catalan (cat)
Some groups entirely in English: No
Some groups entirely in Catalan: Yes
Some groups entirely in Spanish: Yes

Teachers

Miquel Gardeñes Santiago
Blanca Vilà Costa
José Gracia Casamitjana
Rafael Arenas García
José María de Dios Marcer
Milagros Orozco Hermoso

Prerequisites

There is no previous requirements

Teachers and languages:

Grup 1: Rafael Arenas García. Spanish.

Grup 2: Blanca Vilà Costa. Spanish.

Grup 3: Josep Maria de Dios Marcer. Catalan

Grup 51: Josep Gràcia i Casmitjana i Milagros Orozco Hermoso. Catalan.

ADE + Dret: Miquel Gardeñes Santiago. Catalan.

Objectives and Contextualisation

- To understand the problems related with the international private relations, taking into consideration the procedural and the substantial aspects.

- To identify in a given complex case the issues that are regulated by Private International Law and to understand their relationships with other branches of the legal system.
- To Know the basic elements of the Spanish system of Private International Law taking into consideration the international law, the European law and the domestic law.

Competences

- Apprehending the necessary mechanisms in order to know, assess, and apply the legislative reforms as well as to follow the changes produced in a concrete subject.
- Arguing and laying the foundation for the implementation of legal standards.
- Demonstrating a sensible and critical reasoning: analysis, synthesis, conclusions.
- Drawing up and formalising works, reports, documents, rulings.
- Identifying and solving problems.
- Identifying the underlying conflicts of interest in disputes and real cases.
- Identifying, assessing and putting into practice changes in jurisprudence.
- Identifying, knowing and applying the basic and general principles of the legal system.
- Integrating the importance of Law as a regulatory system of social relations.
- Managing bibliographic and documentary resources: databases, browsing, etc.
- Memorising and utilising legal terminology.
- Searching, interpreting and applying legal standards, arguing every case.
- Students must be capable of demonstrating the unitary nature of the legal system and of the necessary interdisciplinary view of legal problems.
- Students must be capable of learning autonomously and having an entrepreneurial spirit.
- Using the main constitutional principles and values as a working tool in the interpretation of the legal system.
- Working in multidisciplinary and interdisciplinary fields.

Learning Outcomes

1. Applying an interdisciplinary and integrated vision of the legal problems in an international environment.
2. Assessing legislative changes and reforms in a context of plurality of systems.
3. Assessing the underlying conflicts of interest in the legal problems proposed in an international environment.
4. Building a legal reasoning or discourse in the field of Public International Law, Private International Law and European Union Law.
5. Demonstrating a sensible and critical reasoning: analysis, synthesis, conclusions.
6. Drawing up and formalising works, reports, documents, rulings.
7. Identifying and assessing the changes and evolution of jurisprudence in a context of plurality of systems.
8. Identifying and knowing the basic contents of every stipulated speciality.
9. Identifying and solving problems.
10. Integrating the importance of Law as a regulatory system of social relations, and the contextualisation of the legal phenomenon in the international environment.
11. Managing bibliographic and documentary resources: databases, browsing, etc.
12. Memorising and using the specific terminology of Public International Law, Private International Law and European Union Law.
13. Students must be capable of learning autonomously and having an entrepreneurial spirit.
14. Using the constitutional values as a criterion for interpretation and solution of conflicts, specially in case of a contradiction between the main fundamental principles of several legal systems.
15. Working in multidisciplinary and interdisciplinary fields.

Content

PROGRAM OF PRIVATE INTERNATIONAL LAW

Lesson 1

Object, concept and content of PIL. Presuppositions: plurality of legal systems and international private relationships. Evolution of the object of PIL. Accuracy of the concept of PIL. Delimitation of its content: conceptions in presence and issues included. The internal dimension of the PIL system: plurilegislative states. The Spain as a plurilegislative State.

Lesson 2

Sources of rules for PIL. Internal sources: importance of the 1978 Constitution. International sources: the different kinds of international treaties. The work of the Hague Conference on Private International Law. *Lex mercatoria*. Private international law and European Union law: primary legislation. Secondary legislation.

Lesson 3

International jurisdiction (I). Sources of rules for international jurisdiction: domestic law, international treaties and European Union law. Regulation 1215/2012: Matters includes. Application in time. The role of the defendant's domicile. The special grounds of jurisdiction. The exclusive grounds of jurisdiction. Autonomy of the parties. Tacit submission Grounds of jurisdiction in favour of weak parties. Interim measures. *Lis pendens* and connected actions. Examination of the jurisdiction *ex officio*. Examination of the jurisdiction *ex parte*. Regulation 2201/2003: rules of jurisdiction regarding nullity of marriage, separation and divorce. Rules of jurisdiction in matters related to parental responsibility. Other issues related with jurisdiction. Regulation 2019/1111.

Lesson 4

International jurisdiction (II). Spanish domestic law: Organic Law on the Judiciary: structure and content. State immunities from jurisdiction and from measures of constraint. International Jurisdiction: structure and grounds of jurisdiction. *Derogatio fori*.- *Ex officio* verification of international jurisdiction. *Ex parte* verification of international jurisdiction: the declinatory plea. International *lis pendens* and connected actions. Law 29/2015, of July 30, on International Legal Cooperation.

Lesson 5

Regulatory techniques in the field of applicable law. - The fundamental distinction between direct and indirect techniques. Indirect techniques: conflicts rules: object, structure and function. Unilateral and bilateral conflicts rules. Evolution of the conflictual technique. Direct techniques: substantial rules and mandatory rules (*lois de police*).

Lesson 6

Application of conflicts rules. Characterisation and the conflict of characterizations. *Renvoi*. Preliminary question. Conflicts rules and plurilegislative States: conventional and domestic regulations. Mobile conflict. Exceptions to the application of foreign law: Public policy exception. Law evasion.

Lesson 7

The rules of conflict of laws regarding contractual and non-contractual obligations. The rules of conflict of laws regarding contracts: Regulation 593/2008, of June 17, 2008, on the law applicable to contractual obligations. Its scope. Choice of law. Applicable law in the absence of choice. Legal capacity and regulation of the form of the contract. Specific contracts: special consideration of the consumer contract and the employment contracts. Mandatory rules. The rules of conflict of laws regarding non-contractual obligations: Regulation 864/2007, of July 11, 2007. Domestic Law. International conventions.

Lesson 8

Application of foreign law by the courts. - Mandatory nature of the conflicts rules and procedural treatment of foreign law. Allegation of foreign law. The proof of foreign law. The participation of the judge in the allegation and proof of foreign law. International conventions aimed to facilitate information on foreign law. Application of foreign law by non-judicial authorities.

Lesson 9

Recognition and enforcement of foreign decisions (I). Scope of the regulation of the recognition and execution of decisions: decisions susceptible of execution. Effects of recognition. Conditions of recognition. Procedures for recognition and declaration of enforceability (exequatur). Recognition and declaration of enforceability in Regulation 1215/2012: recognition conditions. Automatic recognition and incidental recognition. Declaration of recognition. The procedure for declaring the enforceability of foreign decisions in Regulation 1215/2012. Recognition and declaration of enforceability in Regulation 2201/2003 and in Regulation 2019/1111. The recognition and execution of decisions regarding maintenance obligations: Regulation 4/2009. Suppression of exequatur procedures in the European Union: the European enforcement order for uncontested claims (Regulation 805/2004). Decisions on rights to access and return of children (Regulations 2201/2003 and 2019/1111). The European order for payment procedure (Regulation 1896/2006). The European Small Claims Procedure (Regulation 861/2007).

Lesson 10

Recognition and execution of foreign decisions (II). The domestic Spanish law on recognition and enforcement of foreign decisions. Recognition conditions. Recognition procedure: the exequatur. Recognition and enforcement in international conventions: scope of application of the conventions. Relationship between the conventions and the domestic law and between the different conventions.

Lesson 11

International judicial cooperation in civil matters. International notification: notification procedures. The Hague Conventions of 1954 and 1965. Regulation 1397/2007, of November 13, 2007. The Spanish domestic law, Act 29/2015 of July 30. Cooperation in the taking of evidence abroad: the Hague Conventions of 1954 and 1970. Regulation 1206/2001, of May 28, 2001. Free legal aid in cross-border litigation.

Methodology

METHODOLOGY

Statement

Teaching will be mixed: lectures will be online and seminars face-to face

Teaching and assessment methods may be submitted to change in case health authorities impose restrictions to access to campus.

There are three types of activities: activities directed by the teacher, supervised by the teacher and autonomous learning of the student.

1. ACTIVITIES DIRECTED BY THE TEACHER

Activities directed by the teacher are the activities developed in the classroom, under the direction of the teacher during the time scheduled for the class. They may consist in lectures given by the teacher, during the development of the classes practical problems will be raised and analysed and students will be asked to participate, contribute with their own ideas or even they will be invited to advance solutions to the problems that will be posed. During lectures, the different issues will be explained. Although the teacher's discourse will be the axis of the class, the participation of the students is also necessary. The students should read before the class the materials recommended. They should also take with him the relevant legal norms and judicial decisions that will be used during the class. The vast majority of those materials will be made available through the UAB Moodle. The students should bring to the class some compilation of private international law regulations.

Private International Law is not a messy set, but a system. Every issue is connected with the other issues. That implies that it is not possible to understand a part of the course without the knowledge of the other parts. So, it is not advisable to give up classes at some point. Most likely, the student who gives up the classes and comes

back some weeks later would not be able to understand anything. The teachers are not going to verify the class attendance, but the course is designed in such a way that only with a continuous attendance will be possible a correct understanding of the topics we are going to deal with during the course.

Online classes will also demand the participation of the students. We will combine sessions through Teams (or similar platform) with tasks developed through Moodle.

2. SUPERVISED ACTIVITIES

These activities will be developed in class under the supervision of the teacher. Judicial decisions, legal rules and practical problems will be analysed. The participation of the students -individually and in group- will be a key element during the classes. The reading of the materials before the class is also compulsory. In these classes, both written and oral exercises will be carried out. These exercises are aimed not only to strengthen their capacity for legal analysis but also their ability to work in groups, the capacity to elaborate legal documents and to improve techniques of argumentation and oral expression.

3. AUTONOMOUS ACTIVITIES

Autonomous activities are all those activities in which students organize their time and effort independently, individually or in a group. In the case of the course "International Commerce Law" these autonomous activities are the reading of handbooks and recommended materials as well as the study of the different issues of the program, according with the teacher's instructions.

Activities

Title	Hours	ECTS	Learning Outcomes
Type: Directed			
Lectures	35	1.4	8, 7, 10, 14, 2
Work in class	35	1.4	8, 4, 9, 6, 13, 14, 3
Type: Autonomous			
Reading of handbooks and documents	50	2	8, 7, 10, 12, 13, 14, 3
Study	100	4	1, 8, 4, 5, 7, 10, 12, 9, 13, 14, 2, 3

Assessment

ORDINARY EVALUATION

A) During the course two practical cases must be resolved. These exercises will be carried out on the dates that will be announced in class and through the moodle at the beginning of the course. Each of these exercises will represent 12.5% of the final mark (1.25 points out of 10).

B) There will be a final examination (theory) composed of two questions that must be answered by the student without any kind of material. The mark of the exam will be 50% of the final mark (5 points out of 10).

C) A practical exam will be held during the course. The date will be announced at the beginning of the course through the moodle. This practical exam will be 25% of the final mark (2.5 points out of 10).

D) The final mark will be that which results from considering that obtained in the tests described in A), B) and C). It is not mandatory to perform the practical cases of point A) to pass the course in that cases in which the marks of points B) and C) are enough for a final mark of 5/10 (taking into considerations the ponderation already explained). In any case, to pass the course is necessary that the marks of each question of the final exam (point B) and of the practical exam (point C) be at least 2,5/10. Any student with a mark under 2,5/10 in

any of the questions of the final exam or in the practical exam will fail the course, regardless of the marks of the other items.

PROCEEDING FOR THE REVISION OF THE MARKS

A) With the notification of the final marks will be provided information about the date for the revision of these marks. The revision will include all the works used for the evaluation (practical cases, final exam, practical exam).

B) During the course, the students are allowed to demand interviews with the teachers in order to be informed about the marks obtained and the valuations made by the teachers. These interviews are compatible with the revision of the final marks established supra in paragraph "A".

RE-EVALUATION

The students who don't obtain at least 5/10 as final mark in the ordinary evaluation can take part in the re-evaluation. The re-evaluation will consist of the resolution of a case and an exam (theory) equivalent to what is provided in sections "B)" and "C)" of the ordinary evaluation.

The student could decide to re-evaluate only the final exam or the resolution of the practical case. If he or she decides to do that, the mark that will be considered in the re-evaluation for the part that has not been re-evaluated is the mark obtained in the ordinary evaluation.

The activity "resolution of practical cases" (point "A" of the ordinary evaluation) can not be re-evaluated. The marks that will be considered in the re-evaluation for this activity are those obtained in the ordinary evaluation.

At the re-evaluation also applies the criteria of point D) of the ordinary evaluation. That means that any student with a mark under 2,5/10 in any of the questions of the final exam or in the practical exam will not pass the course.

BREACHING OF ACADEMIC INTEGRITY

Any activity against academic integrity (cheating on exams, plagiarism, etc.) will be communicated to the academic authorities. Any exercise in which a breaching of academic integrity will be found will be graded with a zero

Assessment Activities

Title	Weighting	Hours	ECTS	Learning Outcomes
Final exam (theory)	50%	1	0.04	1, 8, 4, 5, 11, 7, 10, 12, 9, 13, 15, 14, 2, 3
Final practical exam	25%	1	0.04	8, 4, 5, 7, 12, 9, 6, 13, 15, 14, 3
First practical case	12,5%	1.5	0.06	8, 5, 9, 6, 15, 14, 3
Second practical case	12,5%	1.5	0.06	8, 5, 9, 6, 15, 14, 3

Bibliography

1) Legal materials:

- Legislación Básica de Derecho internacional privado, Madrid, Tecnos (last edition).
- Legislación de Derecho Internacional Privado, Granada, Comares, (last edition).
- Derecho internacional privado, Navarra, Thomson / Aranzadi, (last edition).

2) Handbooks:

- FERNÁNDEZ ROZAS, José Carlos/SÁNCHEZ LORENZO, Sixto Alfonso., *Derecho internacional privado*, Navarra, Thomson/Reuters, 10ª edición, 2018.
- ESPLUGUES MOTA, Carlos/IGLESIAS BUHIGUES, José Luis/PALAO MORENO, Guillermo, *Derecho internacional privado*, Valencia, Tirant lo Blanch, 13ª ed. 2019.
- GARCIMARTÍN ALFÉREZ, Francisco Javier, *Derecho internacional privado*, Cizur Menor, Civitas/Thomson Reuters, 5ª ed. 2019.

NOTE: Handbooks published when the guide was prepared (July 2019). It is advisable to check the existence of new editions.

Any of the former handbooks can be used to prepare the course.

3) Materials from the practice:

- ARENAS GARCÍA, Rafael, *Casos básicos de Derecho internacional privado con sus soluciones*, Barcelona, Atelier, 2020.
- Several materials that will be provided through the Moodle.