

**Private International Law**

Code: 102259  
ECTS Credits: 9

Degree	Type	Year	Semester
2500786 Law	OB	4	1

## Contact

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## Teaching groups languages

You can check it through this [link](#). To consult the language you will need to enter the CODE of the subject. Please note that this information is provisional until 30 November 2023.

## Teachers

Miguel Gardeñes Santiago

Josep Gracia Casamitjana

Rafael Arenas Garcia

José María de Dios Marcer

Roger Canals Vaquer

Milagros Orozco Hermoso

Josep Suquet Capdevila

## Prerequisites

There are no previous requirements.

Teachers will address communications or any news to the students through the moodle (campus virtual), notwithstanding the possibility of using, additionally, other means of communication. Therefore, it is necessary to consult the moodle regularly.

Teachers of the different theory groups and seminars:

Group 1:

Theory: Rafael Arenas.

Seminar 11: Rafael Arenas.

Seminar 12: Josep Maria de Dios

Seminar 13: Milagros Orozco.

Group 2 (taught in English):

Theory: Josep Suquet and Roger Canals.

Seminar 21: Josep Suquet.

Seminar 22: Roger Canals.

Seminar 23: Rafael Arenas.

Group 51:

Theory: Josep Gràcia and Milagros Orozco.

Seminar 511: Josep Gràcia.

Seminar 512: Milagros Orozco.

Seminar 513: Josep Maria de Dios

Group 70:

Theory: Miquel Gardeñes

Seminar 701: Miquel Gardeñes

Seminar 702: Milagros Orozco.

## **Objectives and Contextualisation**

- Ununderstanding the legal problems related to private-law international relationships, taking into consideration the procedural and the substantive aspects.
- Identifying in a specific case the issues regulated by private international law and understanding their relationships with other branches of the legal system.
- Knowing the basic elements of the Spanish system of private international law, taking into account international treaties applicable in Spain, European law and 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.
- 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.
- Present information in a way that is appropriate to the type of audience.
- 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. Identifying and assessing the changes and evolution of jurisprudence in a context of plurality of systems.
7. Identifying and knowing the basic contents of every stipulated speciality.
8. Identifying and solving problems.
9. Integrating the importance of Law as a regulatory system of social relations, and the contextualisation of the legal phenomenon in the international environment.
10. Managing bibliographic and documentary resources: databases, browsing, etc.
11. Memorising and using the specific terminology of Public International Law, Private International Law and European Union Law.
12. Present information in a way that is appropriate to the type of audience.
13. Seek out, interpret and apply legal provisions related to Public International Law, Private International Law and European Union Law.
14. Students must be capable of learning autonomously and having an entrepreneurial spirit.
15. 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.
16. Working in multidisciplinary and interdisciplinary fields.

## Content

### PROGRAMME OF PRIVATE INTERNATIONAL LAW (PIL)

#### Lesson 1

Object, concept and content of PIL. Preconditions: plurality of legal systems and international private relationships. - The aim of PIL. - The concept of PIL. - Its content: possible approaches and issues included. - The internal dimension of the PIL system: states with more than one legal system (plurilegislative states). Spain as a plurilegislative State.

#### Lesson 2

##### Sources of PIL.

- The Constitution and international treaties on human rights as main principles of the PIL system. - International sources: different kinds of international treaties. The role of the Hague Conference on Private International Law. European Union law. *Lex mercatoria*.

#### Lesson 3

##### International jurisdiction (I).

- Sources of international jurisdiction: internal law, international agreements and European Union law.- Regulation 1215/2012: its temporal and material scope. - Role of the domicile of the defendant. - Exclusive competences. - Choice of forum by the parties. - Tacit submission. - Special heads of jurisdiction. - Weak party protection forums. - Provisional and protective measures. - *Lis pendens* and related actions. - *Ex officio* examination of jurisdiction. - *Ex parte* challenging of international jurisdiction. - Regulations 2201/2003 and 2019/1111: rules of jurisdiction in matters of nullity of marriage, separation and divorce. Rules of jurisdiction in matters relating to the responsibility over minors. Issues related to the application of jurisdiction rules.

#### Lesson 4

##### International jurisdiction (II).

- Spanish internal law: the Organic Law on the Judiciary, as modified by Organic Law 7/2015, of 21 July. - State immunities from jurisdiction and enforcement: the Organic Law 16/2015.- Structure of the system of rules on international jurisdiction of civil and labour courts. - The rule on *derogatio fori*. - *Ex officio* examination of international jurisdiction. - *Ex parte* challenging of international jurisdiction: the "*declinatoria*" (declinatory plea). - International *lis pendens* and related actions in Law 29/2015, of July 30, on International Legal Cooperation in Civil Matters.

#### Lesson 5

##### Regulatory techniques in the field of applicable law.

- Regulatory techniques: concept, functions and types. - The "direct" technique: special substantive rules. - The "direct" technique: overriding mandatory rules (*lois de police*). - The "indirect" technique: conflict-of-laws rules: concept, applicability, types and function. - Elements of the conflict-of-laws rule. Flexibilization of conflict-of-laws rules. - Complementarity and differences between the direct and the indirect technique.

#### Lesson 6

##### Issues related to the application of rules on conflict of laws.

- Characterization and conflict of characterizations. - *Renvoi*. - Preliminary or incidental question. - Referral by the conflicts rule to a State with more than one legal system: autonomous solution, solutions of international treaties and solutions of the EU regulations.- Issues related to time: mobile conflict, transitory international conflict and succession in time of conflict rules. - Exceptions to the application of foreign law: the public policy exception. Law circumvention or *fraude à la loi*.

#### Lesson 7

##### Rules of conflict of laws regarding contractual and non-contractual obligations.

- Conflict of laws rules relating to contracts: Regulation 593/2008, of June 17 2008, on the law applicable to contractual obligations. - Its scope. - Choice of law by the parties. - Applicable law in the absence of choice by the parties.- Capacity to contract and form of the contract.- Weak party contracts: special consideration of consumer contracts and employment contracts.- Overriding mandatory provisions.

- Conflict of laws rules regarding non contractual obligations: Regulation 864/2007, of July 11 2007.- Spanish internal law.- International agreements: special consideration of The Hague Conventions of 14 May 1971 (traffic accidents) and 2 October 1973 (responsibility for products).

#### Lesson 8

##### Application of foreign law.

- Mandatory character of the conflicts rule and procedural treatment of foreign law.- Allegation of foreign law.- Proof of foreign law.- The role of the judge in the application of foreign law.- International conventions aimed at facilitating information on foreign law.- The application of foreign law by non-judicial authorities.

#### Lesson 9

## Recognition and enforcement of foreign decisions.

- Introduction and general concepts. - Systems for managing recognition: A) Need of an *exequatur* procedure for all the effects of recognition: the former Spanish civil procedure act, of 1881. B) "Automatic" or *ex lege* recognition and need of *exequatur* as a prerequisite for enforcement. C) "Automatic" or *ex lege* recognition of all effects, including the executive effect. - The general and subsidiary regulation in Spanish internal law: Title V of Law 29/2015. - Recognition and enforcement in Regulation 1215/2012.- Other examples of suppression of *exequatur* procedures in the EU: the European enforcement title for uncontested claims (Regulation 805/2004). The European order for payment procedure (Regulation 1896/2006). The European small claims procedure (Regulation 861/2007). - The borders between the areas of applicable law and recognition of decisions: the "recognition method".

## Lesson 10

### Effects of foreign public documents.

- Introduction -The form of legal acts: law applicable to formal validity. - Foreign public documents before Spanish authorities: evidentiary effect of foreign public documents in judicial proceedings. The access of foreign public documents to Spanish public registrars. - Formal or extrinsic authenticity of foreign public documents: diplomatic or consular legalization. Multilateral treaties exempting from legalization. The Hague 1961 *apostille* convention. International instruments on international judicial assistance and / or recognition of decisions that exempt from legalization. Regulation (EU) 2016/1191. Criteria for the application of the different provisions on authentication of public documents. Translation requirements.

## Lesson 11

### The law governing the procedure and international judicial assistance in civil matters.

- The law governing procedural issues: the *lex fori regit processum* rule and its exceptions. - International service of documents: The different service procedures. The Hague Conventions of 1954 and 1965. Regulation 2020/1784, of November 25 2020.- Assistance in the taking of evidence: The Hague Conventions of 1954 and 1970. Regulation 2020/1783, of November 25 2020.-Spanish internal law relating to international judicial cooperation in civil matters: Law 29/2015. - Cooperation and information tools: the European Judicial Network in Civil and Commercial Matters.

## **Methodology**

### METHODOLOGY

#### 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. Since the 2023/2024 academic year, these activities will consist in lectures, on the one hand, and seminars, on the other. Lectures are based on a presentation by the professors of the main topics of the subject. Seminars will be devoted mainly to solving practical cases and to other activities allowing a more in-depth analysis of more specific issues of the course programme, such as preparation of presentations and different types of exercises, individually or in group. Seminars may also be devoted to conferences of interest for the subject-matter of the course. Participation in seminars requires an active attitude by students: first, by preparing the sessions in advance, searching the relevant documents and reading the necessary materials and, second, through active participation during the sessions. either orally or in writing. Both in lectures and seminars students are encouraged to put questions in order to solve their doubts.

The main course materials are the relevant legal texts and bibliography (see the bibliography section of this study guide). Other documents or references may be released through the *campus virtual*. The relevant legal texts will be analyzed in classroom. Therefore, students should arrange to be able to consult those legal texts in class.

## 2. SUPERVISED ACTIVITIES

If necessary, individual or group tutorials will be available for students.

## 3. AUTONOMOUS ACTIVITIES

Autonomous activities are all those activities in which students organize their time and effort by themselves, individually or in a group. These activities consist in searching and reading legal texts, textbooks, case law and other relevant materials, as well as studying the different topics of the programme.

In the bibliography section students will find references of textbooks in English, Spanish and Catalan. The best option to learn how to solve practical cases is to prepare and participate regularly in the practical cases proposed during the course. However, and specially for those students who are not able to follow regularly the practical cases of the course, we recommend the following book, which contains practical cases and their solutions: Arenas García, Rafael, *Casos básicos de Derecho internacional privado con sus soluciones* (Barceloma, Atelier, 2023, 2nd. ed.).

Annotation: Within the schedule set by the centre or degree programme, 15 minutes of one class will be reserved for students to evaluate their lecturers and their courses or modules through questionnaires.

## Activities

Title	Hours	ECTS	Learning Outcomes
Type: Directed			
Lectures	39	1.56	7, 6, 9, 15, 2, 3
Seminars	19.5	0.78	1, 13, 4, 5, 10, 6, 9, 12, 8, 14, 16, 15, 2, 3
Type: Autonomous			
Assessment	5	0.2	13, 4, 5, 10, 7, 8, 15, 3
Preparing practical cases and seminars	56.5	2.26	7, 6, 9, 11, 14, 15, 3
Study	100	4	1, 4, 5, 7, 6, 9, 11, 8, 14, 15, 2, 3

## Assessment

### ORDINARY ASSESSMENT

A) During the course two practical cases must be solved in writing in the classroom. 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 (up to 1,25 points out of 10).

B) There will be a final theoretical exam including two questions that must be answered by the student without the help of any kind of material. The only support text allowed will be the programme of the course, in paper, as long as it does not contain annotations. The mark of the exam represents 50% of the final mark (up to 5 points out of 10).

C) A final practical exercise will be held at the end of the course. Its date will be announced at the beginning of the course through the moodle. This practical exercise represents 25% of the final mark (up to 2.5 points out of 10).

D) The final grade will result from considering those obtained in the tests described in previous letters A), B) and C). It is not mandatory to perform the practical cases of point A) to pass the course, as long as the marks obtained in the the tests referred to in letters B) and C) are enough to achieve a minimum overall mark of 5 points out of 10. In addition, to pass the course it is necessary that the marks of each of the questions of the final exam (point B) and of the practical exam (point C) achieve at least 2,5 out of 10. Any student with a mark under 2,5 out of 10 in any of the questions of the final exam or in the final practical exercise will fail the course, regardless of the marks obtained in the other exercises.

## REVIEW OF THE MARKS

Students may ask for a review of the final grades obtained. The date of this review will be published together with the final marks. This review may include all the items used for the assessment (practical cases, final exam, final practical case).

During the course students may ask for interviews with the teachers in order to be informed about the marks obtained and the assessment criteria used by teachers. These interviews will not prevent the possibility of demanding the review of the final marks referred to in the previous paragraph, once they are published.

## RE-ASSESSMENT

Students who do not obtain at least 5 out of 10 as final mark in the ordinary assessment may try to pass the subject at the re-evaluation phase. Those students who pass the course at the ordinary evaluation phase may not apply for a re-evaluation in order to try to improve their marks.

In order to be able to participate in the re-evaluation, students must have participated in activities of evaluation that imply, at least, 66% of them. This means that only students that have undertaken the final practical exercise and the final theoretical exam or, alternatively, the first and second evaluated practical cases and the final theoretical exam may take part in the re-evaluation.

The re-evaluation exam will include solving a practical case and a theoretical exam equivalent to those referred in the previously indicated letters B) and C) of the ordinary evaluation section. It will not be possible to re-evaluate the two practical cases referred to in letter A) of the ordinary assessment section. Therefore, the mark obtained in these cases at the ordinary evaluation phase will be kept for re-evaluation purposes.

Students may choose to take the re-evaluation of both the final exam and the practical case, or only one of these two. In this last case, the mark of the part which is not re-evaluated will be the that obtained previously at the ordinary evaluation stage.

The criteria explained in letter D) of the ordinary evaluation section will also apply in the context of the re-evaluation. This means that any student with a mark under 2,5/10 in any of the questions of the final exam or in the practical case will not pass the course.

## SINGLE ASSESSMENT

On 30 May 2022 our University approved the possibility of "single assesment", or being assessed in a single act, through an amendment of Article 265 of the Academic Regulations. Single assessment is considered an exception to the ordinary system of continuous assessment, and therefore it will only be granted to those persons who expressly request it. This possibility will be put in practice for the first time in the 2023/2024 academic course, in the substantive and procedural conditions laid down by each Faculty. Therefore, students interested in being assessed on the subject of private international law through single evaluation, should make an express request in the conditions established by the Law Faculty.

The single assessment will consist in:

1) A theoretical exam, with two questions (50 % of the grades).

2) A practical case (40 % of the grades).

3) An additional question, practical case or text comment (10 % of the grades).

To pass the subject, the minimum overall grade is 5 points out of 10. In addition, a minimum grade of 2,5 points out of 10 has to be obtained in both questions of the exam mentioned in point 1) and in the practical case mentioned in point 2).

#### RE-ASSESSMENT OF THE SINGLE ASSESSMENT

Students who have chosen the single assessment will also have the possibility of re-assessment if they fail the subject at the ordinary assessment stage. The re-evaluation proofs will also consist in a theoretical exam of two questions (50 % of the grades), a practical case (40 %) and an additional question, practical case or text comment (10 %). To pass the subject it is also necessary to obtain an overall grade of at least 5 points out of 10 and, in addition, to obtain at least 2,5 points out of 10 in each of the questions of the theoretical exam and in the practical case.

Students may undertake the re-evaluation of the theoretical exam, the practical case or the additional question, case or comment, or only of one or two of the elements previously mentioned. In the latter case, for the final grade, the mark of the part that has not been subject to re-evaluation obtained during the ordinary evaluation phase will be kept.

#### BREACHES OF ACADEMIC INTEGRITY

Any activity contrary to academic integrity (cheating in exams, plagiarism, etc.) will be communicated to the academic authorities, who may take the appropriate disciplinary measures. Any exercise in which a breach of academic integrity is discovered will be graded with a zero mark.

### Assessment Activities

Title	Weighting	Hours	ECTS	Learning Outcomes
Final exam (theory)	50%	1	0.04	1, 4, 5, 10, 7, 6, 9, 11, 8, 14, 16, 15, 2, 3
Final practical exam	25%	1	0.04	13, 4, 5, 7, 6, 11, 8, 14, 16, 15, 3
First practical case	12,5%	1.5	0.06	13, 5, 7, 12, 8, 16, 15, 3
Second practical case	12,5%	1.5	0.06	13, 5, 7, 12, 8, 16, 15, 3

### Bibliography

According to the general criteria indicated by the social sciences library of our University, usually bibliographic references are divided into "obligatory" and "recommended" bibliography. However, taking into account that an important number of the students of group 2 (taught in English) come from academic exchange programmes, that the general "obligatory" textbook of this course is written in Catalan (*Lliçons de dret internacional privat*, Barcelona, Atelier, 2023), and that quite often the students of such exchange programmes are not familiar with Catalan language, as far as group 2 is concerned, the book just mentioned is not a compulsory reading. You will find in this section a list of bibliographical references in English language, which may be useful for the purposes of this course.

#### 1. Obligatory bibliography:

Even though it is not "bibliography" in a strict sense, to follow the course it is absolutely necessary to have a compilation of the private international law texts that will be examined. Among others, the following collections of norms, in Spanish language, may be recommended (usually they are edited each year):



- *Legislación Básica de Derecho internacional privado*, Madrid, Tecnos (last edition).
- *Legislación de Derecho Internacional Privado*, Granada, Comares (last edition).
- *Derecho internacional privado*, Navarra, Thomson Reuyers / Aranzadi (last edition).
- "Kodex", to be found in the electronic institutional archives of the University of Murcia: [digitum.um.es/digitum/handle/10201/109821](http://digitum.um.es/digitum/handle/10201/109821)

Of course, you may also access or download the relevant texts directly from the official journals. English authentic versions can be found at the Official Journal of the European Union. As for Spanish acts, the authentic version in Spanish is published in the *Boletín Oficial del Estado* (BOE). However, some English translations of the main Spanish legal texts are available.

## 2. Recommended references:

2.1. Textbooks in Catalan: Font i Segura, Albert, and others, *Lliçons de dret internacioal privat*, Barcelona, Atelier, 2023.

### 2.2. Textbooks in Spanish:

- Garcimartín Alférez, Francisco José, *Derecho internacional privado*, Cizur Menor, Civitas / Thomson Reuters (last edition), available in electronic version.
- Fernández Rozas, José Carlos / Sánchez Lorenzo, Sixto Alfonso, *Derecho internacional privado*, Navarra.Thomson/Reuters, last edition; available in electronic version.
- Esplugues Mota, Carlos Aurelio / Iglesias Buhigues, José Luis / Palao Moreno, Guillermo, *Derecho internacional privado*, València, Tirant lo Blanch, last edition; available in electronic version.
- Calvo Caravaca, Alfonso Luis / Carrascosa González, Javier, *Tratado de Derecho internacional privado* (3 volumes), Valencia, Tirant lo Blanch, 2020; available in electronic version.

### 2.3. Textbooks and other bibilography in English:

- Van Calster, Geert, *European Private International Law. Commercial litigation in the EU*, Hart, 2021; available in electronic version.
- Bogdan, Michael / Pertegás Sender, Marta, *Introduction To Eu Private International Law*, Europa Law Publishing, 2019.
- Hay, Peter, *Advanced introduction to private international law and procedure*, Elgar, 2018.
- Wilke, Felix M., *A conceptual analysis of European Private International Law*, 2019.
- Cuniberti, Gilles, *Conflict of Laws: A Comparative Approach. Text and Cases*, Elgar, 2022.
- Requejo Isidro, Marta (ed.), *Brussels I Bis, A Commentary on Regulation (EU) No 1215/2012*, Elgar Commentaries in Private International Law series, 2022.
- Guinchard, Emmanuel, *Rome I and Rome II in Practice*, Intersentia, 2020.
- Hill, Jonathan / Shúilleabháin, Máire Ní, *Clarkson & Hill's conflict of laws*, Oxford University Press, 2016.
- Torremans, Paul et al. (eds) *Cheshire, North & Fawcett: private international law*, Oxford University Press, 2017.
- Beaumont, Paul / Holliday, Jane (eds.), *A Guide to Global Private International Law*, Bloomsbury, 2022.

### 2.4. Compilation of practical cases (with solutions):

- Arenas García, Rafael, *Casos básicos de Derecho internacional privado con sus soluciones*, Barcelona, Atelier, 2023.

Apart from the texts just mentioned, other materials may be made available to the students through the moodle (campus virtual).

## **Software**

This course does not require any specific software.