



OUTLINE UNIT I. PRIVATE INTERNATIONAL LAW. INTRODUCTION

Profa. Dra. María González Marimón
Assistant Professor of Privater International Law UV
Private International Law – AR Group – 2024-2025
Grau en Dret - Universitat de València

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- 1.- Justification of Private International Law
- 2.- Meaning of *Private International Law*
- 3.- Issues covered by this field of law: international jurisdiction, applicable law and recognition and enforcement of foreign judicial and non-judicial decisions
- 4.- The Spanish model of Private International Law

I. JUSTIFICATION OF PRIVATE INTERNATIONAL LAW

Legal basis

Object

Raison d'être

I. JUSTIFICATION OF PRIVATE INTERNATIONAL LAW

Legal basis

- 1) The world is divided into states with different legal systems.
- 2) There are legal relationships between individuals that go beyond state borders.

Object

- Legal regulation of private international situations and legal relationships issued between private parties

Raison d'être

- To provide an adequate and fair response to the problems to which they are exposed as a result of the existence of a plurality of independent legal systems, which, when they appear to be linked to a specific relationship or legal situation, potentially regulate it.

2.- MEANING OF *PRIVATE INTERNATIONAL LAW*

Concept

- Private international law is a sector of state private law whose *raison d'être* and object is the regulation of private relationships and situations of an international nature generated between individuals, or subjects who are not private individuals but act as such.
- Its purpose is to provide an adequate and fair response to the problems to which they are exposed as a result of the existence of a plurality of independent legal systems, which, when they appear to be linked to a specific relationship or legal situation, potentially regulate it.

2.- MEANING OF *PRIVATE INTERNATIONAL LAW*

I. Meaning of *internacional*

2.- MEANING OF *PRIVATE INTERNATIONAL LAW*

I. Meaning of *internacional*

A. Private International Law as a differentiated sector of the state legal system

- P.I.L. is a sector of the legal system of each state.
- The origin of P.I.L. is mainly national, not international.

B. The international object of Private international Law

- The object of P.I.L. is international, as it regulates legal situations and relationships which have an international character, and therefore are connected with more than one state.
- **FOREIGN ELEMENT**= fulfills the function of linking a specific situation or legal relationship with more than one legal system, thus making it an *international* situation.

2.- MEANING OF *PRIVATE INTERNATIONAL LAW*

2. Characterization of *private*

2. Characterization of *private*

- The intervening parties are private or act in such capacity.
- Relationships among private persons, either natural (individuals) or legal persons (companies)
- Horizontal legal relations

3. ISSUES COVERED BY THIS FIELD OF LAW:

Private
international
relationships or
situations

Linked to more
than one legal
system

They issue different
questions that the
legal operator must
solve

3. ISSUES COVERED BY THIS FIELD OF LAW: (FIELDS, AREAS, SECTORS)

1. International Jurisdiction or International Competence

- Competent courts?
- Where can parties be sued?
- Before the courts of which state may the parties start proceedings?

2. “Conflict of Laws” or Applicable Law

- *Once jurisdiction has been determined:*
- Which is the state law governing the case?
- Which legal system will resolve the case?

3. Recognition/enforcement of “decisions”

- Once the judgment/deed/certificate has been given in one country, can it be recognised/enforced in another country?

3. ISSUES COVERED BY THIS FIELD OF LAW: (FIELDS, AREAS, SECTORS)

From the Spanish perspective...

1. International Jurisdiction or International Competence

- Are Spanish courts competent to hear the case?

2. “Conflict of Laws” or Applicable Law

- *Once jurisdiction has been determined:*
- Which law will the Spanish judge/notary/registrar apply to the case?

3. Recognition/enforcement of “decisions”

- Can a foreign decision be granted effects in Spain?

4. THE SPANISH MODEL OF PRIVATE INTERNATIONAL LAW

1. Legal basis of the Spanish model of P.I.L.

2. Sources of the Spanish model of P.I.L.

4. THE SPANISH MODEL OF PRIVATE INTERNATIONAL LAW

I. Legal basis of the Spanish model of P.I.L.

- Under Art. 149.1.8 of the Spanish Constitution, legislation of P.I.L. is exclusively a state competency (rather than the regions)
- The sources of Spanish P.I.L. are the sources of the Spanish legal system.
 - Spanish Civil Code Art 1.1: *The sources of the Spanish legal system are written laws, custom and general legal principles.*
- **Formal diffusion** of the Spanish model: We do not have a comprehensive Code or Law for P.I.L. (unlike Belgium, Venezuela, etc.) but rather scattered rules across many laws (like France, Austria, etc.): Organic Law on the Judiciary, Law on Civil Procedure, EU Regulations, international conventions, etc.

4. THE SPANISH MODEL OF PRIVATE INTERNATIONAL LAW

2. Sources of the Spanish model of P.I.L.

A. Domestic rules

- Adopted by national parliaments
- In Spain: there is no special P.I.L. law but rather a diffuse model (i.e. Spanish Civil Code, Organic Law on the Judiciary, Law on Civil Procedure, etc.)

B. International conventions

- Multilateral agreements adopted by international organisations
 - (Hague Conference on Private International Law, United Nations Commission On International Trade Law, etc.)
- Bilateral agreements
- Art. 96.I Spanish Constitution
 - *“Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law”.*

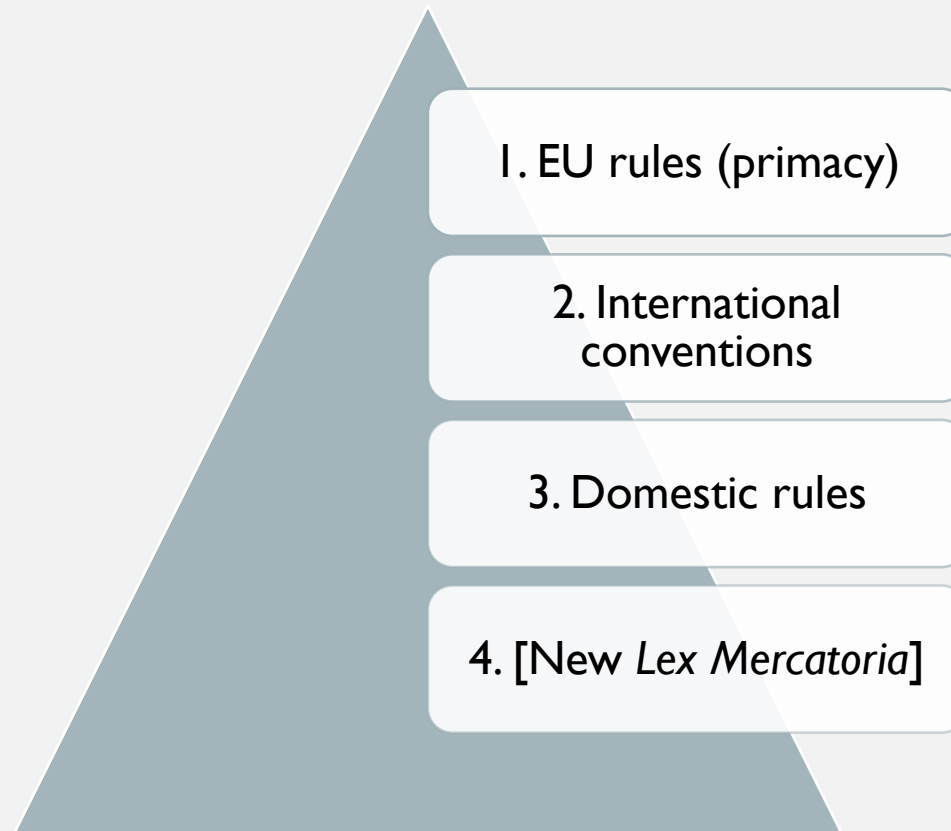
C. EU rules

- Legal basis: Art. 81 Treaty on the Functioning of the European Union
- Regulations and Directives

D. Other components of the model

- New *Lex Mercatoria*: Set of practices and customs of international trade adopted by commercial operators and international organizations

4. THE SPANISH MODEL OF PRIVATE INTERNATIONAL LAW



II. THE EUROPEISATION OF PIL

TFUE: TITLE V: AREA OF FREEDOM, SECURITY AND JUSTICE CHAPTER 3: JUDICIAL COOPERATION IN CIVIL MATTERS

Art. 81 Treaty on the Functioning of the European Union

- 1. The Union shall develop judicial **cooperation in civil matters** having **cross-border implications**, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
- 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the **proper functioning of the internal market**, aimed at ensuring:
 - (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
 - (b) the cross-border service of judicial and extrajudicial documents;
 - (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
 - (d) cooperation in the taking of evidence;
 - (e) effective access to justice;
 - (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - (g) the development of alternative methods of dispute settlement;
 - (h) support for the training of the judiciary and judicial staff.
- 3. Notwithstanding paragraph 2, measures concerning **family law** with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.
- The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.
- The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

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