

Private International Law and International Litigation

Date: Thursday 10.15 – 11.45
Room: US-C 102

Syllabus

Part 1: Introduction – Terms and Sources

Chapters: ∘ 1. Why this lecture? ∘ 2. Methodology of teaching ∘ 3. Definition of terms: conflict of laws, private international law and international procedural law ∘ 4. Relationship with public international law ∘ 5. The three hurdles in international cases ∘ 6. The transaction dilemma and possible answers ∘ 7. Hierarchy of legal sources ∘ 8. The European revolution ∘ 9. EU primary law: competence for the judicial cooperation in civil matters ∘ 10. EU secondary law: regulations ∘ 11. European Court of Justice (ECJ) ∘ 12. International and comparative sources ∘ 13. Recommended literature and databases ∘ 14. Glossary of key terms

Part 2: International Jurisdiction in Civil and Commercial Matters

Chapters: ∘ 1. The parties' litigation considerations ∘ 2. Approaches to jurisdiction worldwide ∘ 3. Brussels Ibis Regulation: developments ∘ 4. 2015 reform ∘ 5. Scope ∘ 6. Key forms of international jurisdiction ∘ 7. General jurisdiction at defendant's domicile ∘ 8. Special jurisdiction: overview ∘ 9. Special jurisdiction I: contracts ∘ 10. Special jurisdiction II: torts ∘ 11. Multi-state infringements (e.g. personality rights) ∘ 12. Contractual or tortious claim? ∘ 13. Special jurisdiction III: branch ∘ 14. Special jurisdiction IV: by connection ∘ 15. Protection of weaker parties I: consumer contracts ∘ 16. Protection of weaker parties II: employment contracts ∘ 17. Jurisdiction agreement ∘ 18. Forum shopping ∘ 19. A boilerplate example ∘ 20. Excursus: Hague Choice of Court Convention 2005 ∘ 21. Jurisdiction by appearance ∘ 22. Exclusive jurisdiction ∘ 23. *Lis pendens* I: proceedings pending in courts of different EU Member States ∘ 24. *Lis pendens* II: proceedings pending before courts of third states

Part 3: Law Applicable to Contractual Obligations

Chapters: ∘ 1. Locating private international law (PIL) ∘ 2. Savigny's "Copernican turn" ∘ 3. Steps in determining the applicable law ∘ 4. Typical connecting factors evaluated ∘ 5. How should PIL norms be designed? ∘ 6. PIL Codifications worldwide ∘ 7. Rome I Regulation: developments ∘ 8. Scope ∘ 9. Excursus: UN Convention on the International Sales of Goods 1980 (CISG) ∘ 10. Parties' choice of law ∘ 11. Comparison to limited choice of law in family and succession matters ∘ 12. Tacit choice of law ∘ 13. Competition of legal systems? ∘ 14. Choice of non-state and religious law? ∘ 15. Excursus: Hague Principles on Choice of Law 2015 ∘ 16. Comparison to US law ∘ 17. Comparison to Chinese law ∘ 18. Applicable law in absence of a choice of law ∘ 19. Protection of weaker

parties I: consumer contracts ∘ 20. “Directed at” criterion ∘ 21. Comparison to US and Swiss law ∘ 22. Choice and EU Unfair Contract Terms Directive ∘ 23. Protection of weaker parties II: employment contracts ∘ 24. Carriage contracts ∘ 25. Insurance contracts ∘ 26. Special rules for further issues (especially on form) ∘ 27. Broad scope of applicable law ∘ 28. General limitations to the applicable law (overriding mandatory provisions, public policy) ∘ 29. Reference to a multi-unit state ∘ 30. Summarising flowchart of the Rome I Regulation ∘ 31. Agency

Part 4: Law Applicable to Non-Contractual Obligations

Chapters: ∘ 1. Rome II Regulation: developments ∘ 2. Scope ∘ 3. Parties’ choice of law ∘ 4. A boilerplate example ∘ 5. Reform of choice of law restrictions? ∘ 6. Applicable tort law in absence of a choice of law ∘ 7. Territoriality v. personality principle ∘ 8. Comparison to German, Swiss and US law ∘ 9. Traffic accidents (Hague Convention 1971, Rome II Regulation) ∘ 10. Product liability (Hague Convention 1973, Rome II Regulation) ∘ 11. Competition law ∘ 12. Intellectual property infringements ∘ 13. Environmental damage ∘ 14. Human rights in global supply chains ∘ 15. Non-tortious non-contractual obligations (unjust enrichment, *negotiorum gestio*, *culpa in contrahendo*) ∘ 16. Scheme of core provisions ∘ 17. Broad scope of applicable law ∘ 18. Rules of safety and conduct ∘ 19. Special rules for further issues ∘ 20. General limitations to the applicable law (overriding mandatory provisions, public policy) ∘ 21. Punitive damages ∘ 22. Summarising flowchart of the Rome II Regulation ∘ 23. Harmonious interpretation of regulations ∘ 24. Personality rights

Part 5: Law Applicable to Property

Chapters: ∘ 1. *Lex rei sitae* as the general rule ∘ 2. Parties’ choice of law possible? ∘ 3. Exceptions I: *lex rei sitae* as a Swiss cheese? ∘ 4. Exceptions II: specific nature of cultural goods ∘ 5. Prospects for international legislation

Part 6: Law Applicable to Companies and Insolvencies

Chapters: ∘ 1. Incorporation v. seat theory ∘ 2. ECJ cases ∘ 3. Treaty law ∘ 4. Seat theory in autonomous national law ∘ 5. The ECJ as a hidden conflicts court ∘ 6. Insolvency law (overview)

Part 7: Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

Chapters: ∘ 1. The enforcement risk ∘ 2. Role within the EU’s judicial cooperation in civil matters ∘ 3. Recognition and Enforcement of foreign judgements between EU Member States ∘ 4. Abolition of *exequatur* under the Brussels Ibis Regulation ∘ 5. The mutual trust in the administration of justice in the EU ∘ 6. Recognition and enforcement of foreign judgements from outside the EU ∘ 7. Recognition and enforcement outside the EU ∘ 8. Hague Judgments Convention 2019

Part 8: Further Issues of International Civil Procedure (Overview)

Chapters: ∘ 1. Procedure is governed by the *lex fori* ∘ 2. Treatment of foreign law ∘ 3. International judicial assistance I: service of documents abroad ∘ 4. International judicial assistance II: taking of evidence abroad ∘ 5. Overview: “2nd generation” of EU regulations ∘ 6. Regulation on the European order for payment ∘ 7. Regulation on the European enforcement of uncontested claims ∘ 8. Regulation on the European small claims procedure ∘ 9. Regulation on the European Account Preservation Order ∘ 10. Access to justice: legal aid

Part 9: Evaluation – Between Fragmentation and Coherence

Chapters: ∘ 1. Effects of Europeanisation ∘ 2. Europe à la carte? ∘ 3. International family law (overview) ∘ 4. International succession law (overview) ∘ 5. Post-Brexit relationships ∘ 6. The future in the EU ∘ 7. Role of the Hague Conference on Private International Law ∘ 8. A global convergence?

Please note:

Bilingual versions of the Brussels Ibis, Rome I and Rome II Regulations (German/English) can be retrieved from <http://www.wiwi.uni-siegen.de/rechtswissenschaften/roesler/lehre>. These texts will be handed out **in the exam**. A **glossary** of key terms will be provided during the lecture.

Literature and Materials

Official legal texts

International procedural law

- **Brussels Ibis Regulation** (No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial disputes) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1215> (*multilingual display* e.g. <https://eur-lex.europa.eu/legal-content/EN-DE-FR/TXT/?uri=CELEX:32012R1215>)
- §§ 12 et seqq. German Code of Civil Procedure (ZPO) in English https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html

Private international law

- **Rome I Regulation** (No 593/2008 on the law applicable to contractual obligations) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0593> (*multilingual display* e.g. <https://eur-lex.europa.eu/legal-content/EN-DE-FR/TXT/?uri=CELEX:32008R0593>)
- **Rome II Regulation** (No 864/2007 on the law applicable to non-contractual obligations) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007R0864> (*multilingual display* e.g. <https://eur-lex.europa.eu/legal-content/EN-DE-FR/TXT/?uri=CELEX:32007R0864>)
- §§ 3 et seqq. German Introductory Act to the Civil Code (EGBGB) in English http://www.gesetze-im-internet.de/englisch_bgbeg

Compendium of EU legislation

- *Compendium of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters (2018 edition)*, 2019 (more than 1000 pages, in all official languages of the EU) <https://publications.europa.eu/en/publication-detail/-/publication/a160c110-ac29-11e9-9d01-01aa75ed71a1>

Official resources

- EU legislation and decisions of the European Court of Justice <http://eur-lex.europa.eu/homepage.html?locale=en> (multilingual display possible)
- European Court of Justice <http://curia.europa.eu/juris/recherche.jsf?language=en>
- European Commission, Directorate-General for Justice http://ec.europa.eu/justice/civil/index_en.htm
- European e-Justice Portal <https://e-justice.europa.eu/home.do?action=home&plang=en>
- European judicial network in civil and commercial matters http://ec.europa.eu/civiljustice/index_en.htm

- Inter-Active Terminology for Europe <http://iate.europa.eu>; see further www.linguee.de (comparing different language versions of e.g. EU legislation)

Textbooks and casebooks

- Bariatti, *Cases and Materials on EU Private International Law*, 2011
<http://www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849460279>
<http://books.google.de/books?id=8396BAAQBAJ&printsec=frontcover>
- Basedow, *The Law of Open Societies – Private Ordering and Public Regulation in the Conflict of Laws*, 2015 <https://brill.com/view/title/31827>
https://books.google.de/books?id=wSXLCOAAQBAJ&printsec=frontcover&hl=de&source=gbs_ge_summary_r&cad=0
- Cheshire, North & Fawcett, *Private International Law*, 15th ed., 2017 (also on English law)
<https://global.oup.com/academic/product/cheshire-north-and-fawcett-private-international-law-9780199678983>
- Cuniberti, *Conflict of Laws: A Comparative Approach – Text and Cases*, 2nd edition, 2022
<https://books.google.de/books?id=pElgEAAAQBAJ&lpg>
- Deinert, *International Labour Law under the Rome Conventions*, 2017 <https://www.nomos-elibrary.de/10.5771/9783845278605/international-labour-law-under-the-rome-conventions>
- Dickinson, *The Rome II Regulation – The Law Applicable to Non-Contractual Obligations*, 2010
<http://global.oup.com/academic/product/the-rome-ii-regulation-9780199589791>
- Dicey, Morris & Collins, *The Conflict of Laws*, 16th ed., 2022 (also on English law)
<http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=5947>
- Fawcett, Harris & Bridge, *International Sale of Goods in the Conflict of Laws*, 2005
<http://ukcatalogue.oup.com/product/9780199244690.do>
- Fentiman, *International Commercial Litigation*, 2nd ed., 2015
<http://ukcatalogue.oup.com/product/9780198712916.do>
- Harding, *Conflict of Laws*, 5th ed., 2014 (also on English law)
<https://books.google.de/books?id=6bhEAQAAQBAJ&lpg>
- Hartley, *Civil Jurisdiction and Judgments in Europe – The Brussels I Regulation, the Lugano Convention, and the Hague Choice of Court Convention*, 2017
<https://global.oup.com/academic/product/civil-jurisdiction-and-judgments-in-europe-9780198729006>
- Hartley, *International Commercial Litigation – Text, Cases and Materials on Private International Law*, 3rd ed., 2020 <https://books.google.de/books?id=3iDgDwAAQBAJ&lpg>
- Hay & Rösler, *Internationales Privat- und Zivilverfahrensrecht*, 5th ed., 2016 (also on German law) <http://www.wiwi.uni-siegen.de/rechtswissenschaften/roesler/studienbuch>
- Hay, *Advanced Introduction to Private International Law and Procedure*, 2018
<https://books.google.de/books?id=fc1eDwAAQBAJ&lpg>
- Hay, Borchers, Symeonides & Whytock, *Conflict of Laws*, 6th ed., 2018 (US law, Hornbook)
http://store.westacademic.com/Hay_Borchers_Symeonides_and_Whytocks_Conflict_of_Laws_6th_Hornbook_Series_9781634603324.html
- Lookofsky & Hertz, *EU-PIL – European Union Private International Law in Contract and Tort*, 2nd ed., 2015 <http://www.jurispub.com/Bookstore/All-Books-by-Title/EU-PIL-European-Union-Private-International-Law-in-Contract-and-Tort-Second-Edition.html>
- Mayer & Heuzé, *Droit international privé*, 12th ed., 2019 (also on French law)
<https://www.lgdj.fr/droit-international-prive-9782275045030.html>
- Stone, *Stone on Private International Law in the European Union*, 4th ed., 2018 <https://www.e-elgar.com/shop/stone-on-private-international-law-in-the-european-union-fourth-edition>
<https://books.google.de/books?id=YYdIDwAAQBAJ&lpg>
- Symeonides, *Choice of Law*, 2016 (US law)
<https://global.oup.com/academic/product/choice-of-law-9780190496722>

https://books.google.de/books?id=3tUdDAAAQBAJ&printsec=frontcover&hl=de&source=gbs_ge_summary_r&cad=0

- Symeonides, *Codifying Choice of Law Around the World – An International Comparative Analysis*, 2014
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199360840.001.0001/acprof-9780199360840> <https://books.google.de/books?id=41Q1AwAAQBAJ&lpg=PP1&hl=de&pg=PP1#v=onepage&q&f=false>
- **van Calster, *European Private International Law*, 3rd ed., 2021**
<https://www.bloomsbury.com/uk/european-private-international-law-9781509942084>
<https://books.google.de/books?id=ybEVEAAAQBAJ&lpg>
- Plender & Wilderspin, *The European Private International Law of Obligations*, 5th ed., 2019
<https://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=10245>

Literature, especially on private international law

Commentaries

- Calliess & Renner (eds.), *Rome Regulations*, 3rd ed., 2020
<https://irus.wolterskluwer.com/store/product/rome-regulations-commentary-third-edition>
- Ferrari (ed.), *Concise Commentary on the Rome I Regulation*, 2nd ed., 2020
<https://www.cambridge.org/it/academic/subjects/law/european-law/concise-commentary-rome-i-regulation-2nd-edition>
- Ferrari & Leible (eds.), *Rome I Regulation*, 2009 <https://www.degruyter.com/view/title/36673>
- Peter Huber (ed.), *Rome II Regulation – Pocket Commentary*, 2011 <https://books.google.de/books?id=VhngQwy5dHkC&lpg>
- Magnus & Mankowski (eds.), *Rome I Regulation*, 2017 <https://www.otto-schmidt.de/rome-i-regulation-commentary-9783504080068>
- Magnus & Mankowski (eds.), *Rome II Regulation*, 2019 <https://www.otto-schmidt.de/rome-ii-regulation-commentary-9783504080075>

Encyclopedia (with national reports and translated acts)

- Basedow, Rühl, Ferrari & de Miguel Asensio (eds.), *Encyclopedia of Private International Law*, 2017 (EncyPIL) <http://www.e-elgar.com/shop/encyclopedia-of-private-international-law>

Journals, yearbook

- ICLQ – International and Comparative Law Quarterly
<http://journals.cambridge.org/action/displayJournal?jid=ILQ>
- **IPRax** – Praxis des Internationalen Privat- und Verfahrensrechts (with English abstracts)
<http://www.iprax.de>
- **J. Priv. Int. L.** – Journal of Private International Law <http://www.tandfonline.com/loi/rpil20>
- **RabelsZ** – Rabels Zeitschrift für ausländisches und internationales Privatrecht (with English abstracts) <https://www.mohrsiebeck.com/zeitschrift/rabels-zeitschrift-fuer-auslaendisches-und-internationales-privatrecht-rabelsz>
- Rev. Crit. DIP – Revue critique de droit international privé
http://www.dalloz-revues.fr/revues/Revue_critique_de_droit_international_privé-30.htm
- Yearbook of Private International Law <https://www.isdc.ch/de/publikationen/yearbook>
- furthermore: EuZW – Europäische Zeitschrift für Wirtschaftsrecht, ZEuP – Zeitschrift für Europäisches Privatrecht, both via www.beck-online.de, RIW – Recht der Internationalen Wirtschaft <https://online.ruw.de/suche/riw>

Online books (as pdfs)

- **European Commission, *Judicial Cooperation in Civil Matters in the European Union – A Guide for Legal Practitioners*, 2015** (available in all official languages of the EU)

<https://publications.europa.eu/en/publication-detail/-/publication/a9da11b8-0a6a-491e-8ae9-a0ff9d7e8535>

- further publications: https://e-justice.europa.eu/287/EN/ejn_s_publications

Blogs and access to academic papers

- <http://conflictoflaws.net>, <https://eapil.org/blog>, <https://gavclaw.com>, <https://europeanciviljustice.wordpress.com>, <http://international-litigation-blog.com>, <https://tlblog.org>, <http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>

Literature especially on procedural law

Commentaries

- Dickinson & Lein, *The Brussels I Regulation Recast*, 2015 <https://global.oup.com/academic/product/the-brussels-i-regulation-recast-9780198714286>
- Magnus & Mankowski (eds.), *Brussels Ibis Regulation*, 2nd ed., 2022 <https://www.otto-schmidt.de/brussels-ibis-commentary-9783504080112>

Journals (besides those mentioned)

- IJPL – International Journal of Procedural Law <http://intersentia.com/en/international-journal-of-procedural-law-31406.html>

All PowerPoints and further material for each part of the lecture

- are available on <https://moodle.uni-siegen.de>. The password will be announced in the lecture.