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# Private International Law and International Litigation

Date: Thursday 12.15 – 13.45
Room: US-F 308

## Syllabus

### Part 1: Introduction – Terms and Sources

*Chapters:* **1.** Why this lecture? **2.** Definition of terms: private international law, international procedural law and conflict of laws **3.** Relationship with public international law **4.** The three hurdles in international cases **5.** The transaction dilemma and possible answers **6.** Hierarchy of legal sources **7.** The European revolution **8.** EU primary law: competence for the judicial cooperation in civil matters **9.** EU secondary law: regulations **10.** European Court of Justice (ECJ) **11.** International and comparative sources **12.** Recommended literature and databases **13.** 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.** Legislative developments in Europe **4.** Brussels I*bis* Regulation: scope **5.** Key types of international jurisdiction **6.** General jurisdiction: defendant's domicile **7.** Special jurisdiction: overview **8.** Special jurisdiction I: contracts **9.** Special jurisdiction II: torts **10.** Multi-state infringements (e.g. personality rights) **11.** Contractual or tortious claim? **12.** Special jurisdiction III: branch **13.** Special jurisdiction IV: by connection **14.** Protection of weaker parties I: consumer contracts **15.** Protection of weaker parties II: employment contracts **16.** Jurisdiction agreement **17.** Boilerplate examples **18.** Excursus: Hague Choice of Court Convention 2005 **19.** Forum shopping **20.** Jurisdiction by appearance **21.** Exclusive jurisdiction **22.** *Lis pendens* I: proceedings pending in courts of different EU Member States **23.** *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.** Legislative developments **6.** Rome I Regulation: scope **7.** Parties' choice of law **8.** Tacit choice of law **9.** Competition between legal systems **10.** Choice of non-state and religious law? **11.** Applicable law in absence of a choice of law **12.** Comparison to US and Chinese law **13.** Protection of weaker parties I: consumer contracts **14.** "Directed at" criterion **15.** Choice and EU Unfair Contract Terms Directive **16.** Comparison to US and Swiss law **17.** Protection of weaker parties II: employment contracts **18.** Transport contracts **19.** Insurance contracts **20.** Special rules for further issues (especially form) **21.** Broad scope of applicable law **22.** General limitations to the

applicable law (overriding mandatory provisions, public policy) **23.** Reference to a multi-unit state **24.** Summarising flowchart of the Rome I Regulation **25.** Agency

### Part 4: Law Applicable to Non-Contractual Obligations

*Chapters:* **1.** Legislative basics **2.** Rome II Regulation: scope **3.** Parties' choice of law **4.** Boilerplate example **5.** Applicable tort law in absence of a choice of law **6.** Comparison to German, Swiss and US law **7.** Traffic accidents (Hague Convention 1971, Rome II Regulation) **8.** Product liability (Hague Convention 1973, Rome II Regulation) **9.** Competition law **10.** Intellectual property infringements **11.** Environmental damage **12.** Non-tortious non-contractual obligations (unjust enrichment, *negotiorum gestio*, culpa in contrahendo) **13.** Broad scope of applicable law **14.** Rules of safety and conduct **15.** Special rules for further issues **16.** General limitations to the applicable law (overriding mandatory provisions, public policy) **17.** Punitive damages **18.** Summarising flowchart of the Rome II Regulation **19.** Harmonious interpretation of regulations **20.** 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 on freedom of establishment **3.** Treaty law **4.** Approaches in autonomous national law **5.** ECJ as a hidden conflicts court **6.** Insolvency law

### Part 7: Recognition and Enforcement of Foreign Judgments

*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 I*bis* 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.** Regulation on the European order for payment **6.** Regulation on the European enforcement of uncontested claims **7.** Regulation on the European small claims procedure **8.** Regulation on the European Account Preservation Order **9.** 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.** Future developments in the EU **6.** Role of the Hague Conference on Private International Law **7.** A global convergence?

Please note:

**Bilingual versions** of the **Brussels I*bis*, Rome I and Rome II Regulations (German/English)** can be retrieved from https://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 I*bis* Regulation** (No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial disputes) https://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) https://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) https://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 https://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 https://eur-lex.europa.eu/homepage.html?locale=en (multilingual display possible)
- European Court of Justice https://curia.europa.eu/juris/recherche.jsf?language=en
- European Commission, Directorate-General for Justice and Consumers https://commission.europa.eu/topics/justice-and-fundamental-rights_en
- European judicial network in civil and commercial matters https://e-justice.europa.eu
- Inter-Active Terminology for Europe https://iate.europa.eu; see further https://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 https://www.bloomsbury.com/uk/cases-and-materials-on-eu-private-international-law-9781847316424 https://books.google.de/books?id=8396BAAAQBAJ&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=wSXLCQAAQBAJ&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 https://global.oup.com/academic/product/the-rome-ii-regulation-9780199589791
- Dicey, Morris & Collins, *The Conflict of Laws*, 16th ed., 2022 (also on English law) https://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=5947
- Fawcett, Harris & Bridge, *International Sale of Goods in the Conflict of Laws*, 2005 https://ukcatalogue.oup.com/product/9780199244690.do
- Fentiman, *International Commercial Litigation*, 2nd ed., 2015 https://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) https://www.wiwi.uni-siegen.de/rechtswissenschaften/roesler/studienbuch
- **Hay, *Advanced Introduction to Private International Law and Procedure*, 2nd ed., 2023** https://books.google.de/books?id=kLLLEAAAQBAJ&lpg
- Hay, Borchers, Symeonides & Whytock, *Conflict of Laws*, 6th ed., 2018 (US law, Hornbook) https://www.westacademic.com/Hay-Borchers-Symeonides-and-Whytocks-Conflict-of-Laws-6th-Hornbook-Series-9781634603324
- 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=YYdlDwAAQBAJ&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 https://academic.oup.com/book/33111 https://books.google.de/books?id=41Q1AwAAQBAJ&lpg=PP1&hl=de&pg=PP1#v=onepage&q&f=false
- **van Calster, *European Private International Law*, 4th ed., 2024** https://www.bloomsbury.com/uk/european-private-international-law-9781509970919 https://books.google.de/books?id=ybEVEAAAQBAJ&lpg

- Wilderspin, *The European Private International Law of Obligations*, 6th ed., 2023 https://www.sweetandmaxwell.co.uk/Product/Conflict-of-Laws/European-Private-International-Law-of-Obligations-The/Hardback-and-eBook-ProView/43220329

Literature, especially on private international law

Commentaries

- Calliess & Renner (eds.), *Rome Regulations*, 3rd ed., 2020 https://lrus.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) https://www.e-elgar.com/shop/encyclopedia-of-private-international-law

Journals, yearbook

- ICLQ – International and Comparative Law Quarterly https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly
- **IPRax** – Praxis des Internationalen Privat- und Verfahrensrechts (with English abstracts) https://www.iprax.de
- **J. Priv. Int. L.** – Journal of Private International Law https://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 https://www.dalloz-revues.fr/revues/Revue_critique_de_droit_international_prive-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

- https://conflictoflaws.net, https://eapil.org/blog, https://gavclaw.com, https://europeancivilljustice.wordpress.com, https://tlblog.org, https://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-iibis-commentary-9783504080112

### Journals (besides those mentioned)

- IJPL – International Journal of Procedural Law https://brill.com/view/journals/ijpl/ijpl-overview.xml

## 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.