

INTRODUCTION TO PRIVATE INTERNATIONAL LAW

What is Private International Law?



DEFINITION OF PIL

The Private International Law is that part of the Law of every State which deals with cases having a foreign element.

Two elements are fundamental in order to determine a private international social relation:

- Internationality
- Horizontal relations

In contradistinction to Public International Law, which seeks primarily to regulate the relations between different sovereign States and is, at any rate in theory, the same everywhere, the rules of PIL are different from country to country.

THE FOREIGN ELEMENT

How could this “contact with some system of Law other than the domestic law” be understood?

Such a contact may exist, for example, because a contract was made or to be performed in a foreign country, or because a tort was committed there, or because property was situated there, or because the parties are not citizens of the same State.

What is the element needed in order to determine whether or not we are looking at a private international law relation?



THE FOREIGN ELEMENT



By a “foreign element” is meant simply a **contact** with some system of Law other than the domestic law.

CASES: Internationality of PIL

1. Two companies with seat in Madrid and Bilbao sign a contract of sale of goods over a batch of cereal that is placed in Ohio in the moment of signature of the contract. Delivery of the goods must take place in La Coruña (Spain) and payment in Madrid. Delivery does not take place and the buyer wants to begin proceedings against the seller.

Please specify:

Is it an international situation or a merely internal situation?

2. Contract of maritime transport of goods between the Bilbao harbour to Cadiz. Place of signature of the contract Bilbao. The parties decide that the contract will be governed by the English Law.

Please specify:

Is it an international situation or a merely internal situation?

3. A company with head office in Dallas (Texas) buys from another company with social seat in Madrid a batch of olive oils. The American company sues the Spanish one for breach of the contract.

Please specify:

Is it an international situation or a merely internal situation? Why?

CASES: Horizontal private relations

1. Spanish state asks a famous Spanish tennis player with habitual residence in Andorra the payment of an amount of money in relation with taxes that this woman was supposed to owe the Spanish state.

Is this a private international law social relation? Why or why not?

2. Germany, through a public offer of contract, buys from an American Company 20.000 of chairs as part of the Program of the Improvement of the Old People's Houses in all the country.

Germany sues the American company for breach of the contract.

Is this a private international law social relation? Why or why not?

3. The European Union decides to participate in the international trade of goods in order to sell a surplus of fish. The EU finally sells to a Chinese company.

The EU sues Chinese company for non-payment.

Is this a private international law social relation? Why or why not?

The questions that arise in conflict of laws cases are of two main types:

1. Has one State's court jurisdiction to determine this case?
2. If so, what law should it apply?
3. And finally, will that State recognize or enforce a foreign judgment purporting to determine the issue between the parties?

JURISDICTION

- o The rules ask to jurisdiction determine whether or not one court can hear a case.
- o In fact, these rules identify the country or countries whose courts can appropriately deal with a case.
- o How could the jurisdiction be established in a Federal State or for example in Spain?
- o FORUM: Element used by the domestic legislator in order to recognize the international jurisdiction to his own domestic courts.
- o Who starts this process? The claimant

Problematic in the scope of the jurisdiction

1. *Forum non conveniens*
2. Forum shopping
3. *Forum necessitatis*

Spanish regulation of international jurisdiction

1. International Legal Documents
 - i. EU Law. Such as: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
 - ii. Multilateral international treaties. For example: Contract for the International Carriage of Goods by Road (1956).
 - iii. Bilateral international treaties. As: Any Treaty between Spain and other State about international sale of goods.
2. Domestic (Spanish) Law
 - i. Spanish Constitution
 - ii. LOPJ

APPLICABLE LAW

- The applicable law is the rules used in order to solve the international dispute.
- Two different types can be distinguished:
 - Domestic Law
 - Material Law. Example: CISG.

Problematic in the scope of the applicable law

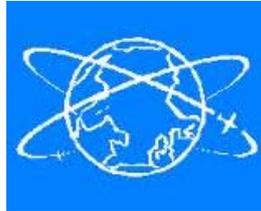
1. Categorization or characterization
2. *Renvoi*
3. The incidental question
4. The time factor

ENFORCEMENT

- On the whole, the enforcement of any judgment is the final step to try to solve and finish with any dispute.
- Enforcement in the international scope: The court who judges and the court who enforces the judgment can be situated in different countries.

Problematic in the scope of the enforcement

1. The relativity of foreign sentences
2. Territorially limited efficiency



THE END OF THE INTRODUCTION OF PRIVATE
INTERNATIONAL LAW

LET'S GO DEEPER!