



VNIVERSITAT D VALÈNCIA

FACULTAT DE DRET

Departamento de Derecho Internacional

“Adolfo Miaja de la Muela”

Prof. Dr. Carlos Esplugues Mota
LLM (Harvard), MSc (Edinburgh)
Catedrático de Derecho internacional privado

National University of Taiwan. College of Law (NTU Law)

Course:

HARMONIZATION OF PRIVATE LAW AND PRIVATE INTERNATIONAL LAW IN THE EU

Lecturer:

Dr. Carlos Esplugues, (LLM, Harvard) (MSc, Edinburgh)
Full Professor of Private International Law
University of Valencia (Spain).

Dates:

27, 28, 29 & 30 November 2017 & 1 December 2017

Time:

16.30 – 20.10.

Objectives:

The course approaches the creation of a common area of freedom, security and justice in the EU and provides an analysis of the process of harmonization of Private Law and Private International Law in the European Union with special reference to the harmonization of the model of dispute resolution.

I. SYLLABUS.

Topic 1. The EU: A basic approach

- 1.1.** Basic features.
- 1.2.** Its structure, policies and how it works.
- 1.3.** Sources of European Union Law



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Topic 2. The process of harmonization of Private Law and Private International Law in the EU

2.1. Legal basis

2.2. The European Union as an integrated Space of Freedom, Security and Justice.

2.2.1. Basis and evolution.

2.2.2. Basic traits of Articles 67-89 TFEU: harmonization of PL and PIL.

Topic 3. The process of harmonization of Private Law in the EU

3.1. Legal basis.

3.2. Politics of European Private Law.

3.3. Two key (and different) examples:

3.3.1. Consumer law.

3.3.2. Contracts law.

Topic 4. The process of harmonization of Private International Law in the EU in practice: Rules on jurisdiction.

4.1. General:

4.1.1. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

4.2. Specific areas:

4.2.1. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

4.2.2. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

4.2.3. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic



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instruments in matters of succession and on the creation of a European Certificate of Succession.

4.3. Others:

4.3.1. The Hague Convention on choice of Court Agreements of 30 June 2005.

Topic 5. A broader common understanding of “access to justice” in the EU.

5.1. EU and arbitration

5.2. EU and mediation.

5.2.1. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

5.2.2. The impact of UNCITRAL works on the EU legal system.

Topic 6. The process of harmonization of Private International Law in the EU in practice: Rules on choice of Law.

6.1. General:

6.1.1. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

6.1.2. Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

6.1.3. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

6.1.4. The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

6.2. Enhanced cooperation:

6.2.1. Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.



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Topic 7. The process of harmonization of Private International Law in the EU in practice: Rules on recognition and enforcement of judgments and authentic instruments.

7.1. General:

7.1.1. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

7.1.2. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

7.2. Specific areas:

7.2.1. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

7.2.2. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

7.2.3. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Topic 8. The process of harmonization of Private International Law in the EU in practice: Others.

8.1. Cooperation among judicial and public authorities:

8.1.1. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

8.1.2. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000.

8.2. Legal aid:



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8.2.1. Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

8.3. European processes:

8.3.1. Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

8.3.2. Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007.

Topic 9. TOWARDS A REGULATION “0” ON PRIVATE INTERNATIONAL LAW?

9.1. Application of foreign law by judicial authorities in the EU.

9.2. Application of foreign law by non-judicial authorities in the EU.

II. MATERIALS.

A. Compulsory basic readings:

Topic 1 & 2:

Rafał MAŃKO, *The EU as a community of law. Overview of the role of law in the Union*, Brussels, European Parliament. Briefing March 2017 - EPRS | European Parliamentary Research Service

([http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599364/EPRS_BRI\(2017\)599364_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599364/EPRS_BRI(2017)599364_EN.pdf))

Topic 3:

Martijn W. HESSELINK, “The Common Frame of Reference as a Source of European Private Law”, *Tulane Law Review*, (2009) 83, 919-971

(https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1270563)



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Topic 5:

Carlos ESPLUGUES & José Luis IGLESIAS, “Mediation and Private International Law: Improving Free Circulation of Mediation Agreements Across the EU”, in Directorate-General for Internal Policies, Policy Department C. Citizens’s Rights and Constitutional Affairs, *The Implementation of the Mediation Directive 20 November 2016 Compilation of In-depth Analyses*, Brussels, European Parliament, 2016, pp. 71-95.

(<https://ssrn.com/abstract=2874952>)

Topic 4, 6, 7 & 8:

Eleanor Cashin Ritaine: “Harmonising European Private International Law: A Replay of Hannibal’s Crossing of the Alps?”, *International Journal of Legal Information*, (2006) Vol. 34, Iss. 2, Article 15, pp. 419-439.

(<http://scholarship.law.cornell.edu/ijli/vol34/iss2/15>)

B. Other materials.

a. Bibliography.

Topic 1:¹

-EU institutions and other bodies: https://europa.eu/european-union/about-eu/institutions-bodies_en (R)

-European Union: How the European Union works, Luxembourg, 2013 (http://www.gr2014parliament.eu/Portals/6/PDFFILES/NA0113090ENC_002.pdf) (HR)

-Pollack, Mark A., “Theorizing the European Union: Realist, Intergovernmentalist and Institutional Approaches” (prel. draft, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622912) (R)

Topic 2:

¹ The existing bibliography on these topics is extremely broad. We have just made reference to some relevant works that are available on free basis (reference is included). HR stands for texts whose reading is necessary. R stands for texts whose Reading is just recommended.



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-European Commission, *Compendium of European Union Legislation on Judicial Cooperation on Civil and Commercial Matters*, Brussels, 2013
(http://ec.europa.eu/justice/civil/files/compendium_civil_2013_en.pdf) (R)

-Kramer, X., De Rooij, M., Lazić, V. et al, *A European Framework for private international law: current gaps and future perspectives*, European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens’s Rights and Constitutional Affairs, Brussels, 2012
(<http://www.europarl.europa.eu/document/activities/cont/201212/20121219ATT58300/20121219ATT58300EN.pdf>) (R)

-Kiestra, L.R., “Chapter 2. Introduction to Private International Law”, in Kiestra L.R., *The Impact of the European Convention on Human Rights on Private International Law*, Amsterdam/Heidelberg, Asser/Springer, 2014, 13
(https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjOILOrLXQAhWMQBQKHSUA8wQFggkMAA&url=https%3A%2F%2Fwww.springer.com%2Fcd%2Fcontent%2Fdocument%2Fcd_downloaddocument%2F9789462650312-c2.pdf%3FSGWID%3D0-0-45-1477021-p176811937&usg=AFQjCNHGaAYgw30kel-8-vKfQ3szufbRA&cad=rja) (HR)

-Kunda, I. & Gonçalves de Melo Marinho, C.M., *Practical Handbook on European Private International Law*, no ref.
(<http://old.just.ro/LinkClick.aspx?fileticket=Mx%2BaR1qqfmU%3D&tabid=2285>) (R)

Topic 3:

-Gómez-Pomar, F., “The Harmonization of Contract Law through European Rules: A Law and Economics Perspective”, *InDret*, April 2008 (http://www.indret.com/pdf/535_en.pdf) (HR).

-Loos, M.B.M., *Full Harmonisation as a Regulatory Concept and Its Consequences for the National Legal Orders. The Example of the Consumer Rights Directive*, Centre for the Study of European Contract Law, Working Paper Series, No. 2010/03
(https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1639436) (HR)

-Micklitz, H.W. & Reich, N., *The Commission Proposal for a “Regulation on a Common European Sales Law (CESL) – Too Broad or not Broad Enough?”*, European University Institute Florence, Working Papers, Law 2012/04
(https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2013183) (R)

TOPIC 4:

-European Commission, *Practice Guide for the application of the new Brussels II Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental*



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responsibility, repealing Regulation (EC) No 1347/2000), no ref.
(http://ec.europa.eu/civiljustice/parental_resp/parental_resp_ec_vdm_en.pdf) (R)

-Hess, B., Pfeiffer, Th. & Schlosser, P., *Report on the Application of Regulation Brussels I in the Member States*, Heidelberg, 2007
(http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf) (R)

-Pretelli, I., *The Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matter (Recast)*, European Parliament, Directorate-General for Internal Policies, Policy Department, Citizens's Rights and Constitutional Affairs, Brussels, 2011
([http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453205/IPOL-JURI_NT\(2011\)453205_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453205/IPOL-JURI_NT(2011)453205_EN.pdf)) (R)

TOPIC 5:

-Esplugues, C., “Mediation in the EU after the Transposition of the Directive 2008/52/EC on Mediation in Civil and Commercial Matters”, in Esplugues, C. (ed.), *Civil and Commercial Mediation in the E.U. after the transposition of the Directive 2008/52/EC on Mediation in Civil and Commercial Matters*, in *Civil and Commercial Mediation in Europe: Cross-Border Mediation Vol II.*, Cambridge, Intersentia, 2014, pp. 485-771.

TOPIC 6:

-Brand, R.A., *The Rome I Regulation Rules on Party Autonomy for Choice of Law: A U.S. Perspective*, Legal Studies Research Paper Series Working Paper No. 2011-29, December 2011
(https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1973162) (R)

-European Commission, *Judicial Cooperation in Civil Matters in the European Union. A guide for legal practitioners*, Brussels, 2014
(http://ec.europa.eu/justice/civil/files/civil_justice_guide_en.pdf) (R)

-European Commission, *Practice Guide for the Application of Brussels IIa Regulation*, Brussels, 2014 (http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf) (R)

-European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*, Brussels, 15.4.2014 COM(2014) 225 final (http://ec.europa.eu/justice/civil/files/matrimonial_act_part1_v3_en.pdf) (R)

-Kramer, X.E., “The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: The European Private International Law Tradition Continued - Introductory Observations, Scope, System, and General Rules”, *Nederlands Internationaal Privaatrecht* (2008) No 4, 414



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(http://www.law.cam.ac.uk/repo-documents/pdf/events/PILConf/Party_Autonomy_in_European_Private_International_Law.pdf) (R)

-Maultzsch, F., “Party Autonomy in European Private International Law: Uniform Principle or Context-Dependent Instrument?”, (2016) 12 *Journal of Private International Law* (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2653835) (R)

-UK Government, Guidance on the law applicable to contractual obligations (Rome I) Outline of the main provisions, HMS, London, 2010 (<http://webarchive.nationalarchives.gov.uk/20110201125714/http://www.justice.gov.uk/publications/docs/guidance-law-contractual-obligations-romei.pdf>) (HR)

TOPIC 7 (see references at Topic 4 and the following):

-Requejo, M., “Recognition and Enforcement in the new Brussels I Regulation (Regulation 1215/2012, Brussels I recast): The Abolition of Exequatur”, no ref. (http://www.ejtn.eu/PageFiles/6333/Requejo_Doc.pdf) (HR)

TOPIC 8:

-European Commission, *Judicial Cooperation in Civil Matters in the European Union. A guide for legal practitioners*, Brussels, 2014 (http://ec.europa.eu/justice/civil/files/civil_justice_guide_en.pdf) (R)

TOPIC 9:

-Esplugues, C., “Harmonization of Private International Law in Europe and Application of Foreign Law: The Madrid Principles of 2010”, *Yearbook of Private International Law* (2011) 13, 273 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2152058) (HR)

b) European Judicial Atlas in Civil Matters:

- https://e-justice.europa.eu/content_european_judicial_atlas_in_civil_matters-321-en.do

c) Case Law:

Cases rendered by the European Court of Justice are available in full at:

-<http://curia.europa.eu/juris/recherche.jsf?language=en> (search form)

-http://curia.europa.eu/jcms/jcms/Jo2_7045/en/ (numerical access)



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-Member States case law: https://e-justice.europa.eu/content_member_state_case_law-13-en.do

d) Legislation:

- Treaties of the European Union (available at: https://europa.eu/european-union/eu-law/decision-making/treaties_en)
- EU Law: https://e-justice.europa.eu/content_eu_law-3-en.do
- Member states law: https://e-justice.europa.eu/content_member_state_law-6-en.do
- Official Journal of the European Union (<http://eur-lex.europa.eu/oj/direct-access.html>)

e) Others:

-Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR) Outline Edition*, Munich, Sellier, 2009 (http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf)

Taipei, November 2017.