



# COMILLAS

UNIVERSIDAD PONTIFICIA

ICAI

ICADE

CIHS

**2023 – 2024  
COURSE  
DESCRIPTIONS**

## SUBJECT DETAILS

Data on the subject	
Full Name	Private International Law
Code	E000009094
Degree	<a href="#">Bachelor's Degree in Law</a>
Teaching at	Bachelor's Degree in Law (E-1) [Fourth Year] Private International Law, E000009094 [Exchange]
Level	European Bachelor's Degree
Type	Semester course
ECTS Credits	6
Basis	Mandatory (Bachelor's degree)
Department / Area	Private law / Private International Law

Data on the teaching staff	
<b>Academic</b>	
Name	Dr. Eduardo Álvarez Armas
Department / Area	Private Law / Private International Law
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## SPECIFIC INFORMATION ON THE SUBJECT

### Context of the subject

### Contribution to the professional profile of the degree

In the current context, characterized by the increasing frequency of international relations between individuals, private international law is undergoing rapid development, which in the European Union is further stimulated by the needs of the EU integration process. Lawyers, judges, notaries and other law practitioners are facing the need to have a proficient knowledge of the legal framework to such relations, a legal framework where rules stemming from international conventions and acts of the institutions of the EU is becoming more and more relevant (notwithstanding state rules).

In this sense, this course aims to present to the student, first of all, the basic elements of private international law: the study of the object, the content, and the sources of the discipline allows the student to acquire its "language" and its way of reasoning.

Recent developments in private international law have increased the relevance of the treatment of international civil procedural law in the context of the growing Europeanization of the legal systems of the Member States of the European Union. In this course, as a first theme, the study of the international jurisdiction of state courts is approached from a practical perspective (where case law plays a significant role). Secondly, international legal assistance mechanisms (evidence, notifications and information on foreign law) and the specificities arising from the presence of a foreign element in the proceedings are analysed.

The problems surrounding the identification of the law applicable to international relationships are also addressed (as a third theme), paying special attention to the process of interpretation and application of choice-of-law rules, and to the difficulties surrounding demonstrating the content of foreign law. The study of the applicable law adopts, again, a practical approach where case law is given a central role: via the analysis of cases, the student discovers the law applicable to the main institutions of private law.

Fourthly, and finally, Recognition and enforcement of foreign judgments completes the study of private international law, and thus the overview of the discipline's problems, to the extent needed to satisfy modern legal professional needs.

### Competences - Goals

#### Competences to be developed

#### Generic Competences

CGI05

Problem solving. Ability to apply knowledge in practice, obtaining outcomes.



	RA1	The student adequately understands the main issues that may arise in private law situations, identifying their various elements, distinguishing what is important and substantial from what is secondary, and is able to follow a logical sequence to solve any problems faced.
	RA2	When addressing problems, they apply the theoretical knowledge they have acquired, suggesting sufficiently-reasoned and well-argued alternative legal options (if applicable).
	RA3	They reach an adequate outcome, overcoming any obstacle that may arise.
<b>Specific Competences</b>		
CED01	Ability to place law and legal relations in a globalised context.	
	RA1	The student becomes aware of the increasingly frequent interactions with foreign legal systems, and of the problems involved in determining the jurisdictional scope of state power and the law applicable to each element of an international relationship.
	RA2	They understand the interaction between the domestic legal system (in particular, private law and, specifically, contract law) and other foreign systems, and they identify the practical consequences that arise therefrom.
	RA3	They understand the diversity of legal systems and (as they consider this a source of richness), they appreciate the need to "locate" international legal relations adequately; they also understand the advantages and disadvantages that (legal) globalization entails for legal relationships.
CED04	Ability to analyse the elements of a legal problem, and to suggest solutions thereto.	
	RA1	The student differentiates and distinguishes the key aspects of private-law problems, suggesting legally-founded options to solve them, and adequately synthesizes various relevant arguments.
	RA2	They identify the presence of a foreign element in a relationship and, therefore, its international character.
	RA3	They differentiate and distinguish problems (including procedural ones) pertaining to the identification of the <i>forum</i> , to the assertion of jurisdiction by Spanish courts, and to the convenience of engaging (or not) in legal proceedings before them.



	RA4	They identify the problems pertaining to the identification of the applicable law (characterization, <i>renvoi</i> , harmonization, prior issues, public policy...) and they suggest legally-founded options for their solution.
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## COURSE SYLLABUS AND CONTENT

### Content – Themes

#### Part I – INTRODUCTION

##### Topic 1: INTRODUCTION

- 1. Prerequisites, object and content of private international law. Distinction between 'forum' and 'ius'**
- 2. Private international Law as international law, as state law and as private law**
- 3. Historical evolution of this field of law**

##### Topic 2. SOURCES OF PRIVATE INTERNATIONAL LAW

- 1. Private international law within the framework of the Spanish legal system**
  - 1.1. Significance of general international law
  - 1.2. Spanish Constitution
  - 1.3. "Lex Mercatoria"
- 2. Diversity of sources: European, conventional and domestic rules in Spanish private international law**
  - 2.1. Regulations and other EU instruments
  - 2.2. International treaties
  - 2.3. Domestic instruments
  - 2.4. Case law. Special mention to the Court of Justice of the European Union's case law (CJUE).

#### PART II – INTERNATIONAL JURISDICTION

##### Topic 3. INTERNATIONAL JURISDICTION: GENERAL ISSUES AND RULES ON THE CONFERRAL OF JURISDICTION

1. Concept
2. Criteria for the conferral of international jurisdiction and their scope



## Topic 4. INTERNATIONAL JURISDICTION: GENERAL QUESTIONS AND EU REGULATION 1215/2012

1. International jurisdiction in EU Regulation 1215/2012 in civil and commercial matters: exclusive jurisdiction, submission, domicile of the defendant and special jurisdiction by reason of the subject matter.
2. Implementation issues in EU Regulation 1215/2012: verification, international *lis pendens*, related actions, provisional and precautionary measures and plurality of defendants.

## Topic 5. INTERNATIONAL JURISDICTION: OTHER REGULATIONS AND STATE LAW

1. International jurisdiction and problems of application in Regulation 2019/1111 on matrimonial matters and matters of parental responsibility and international child abduction.
2. International jurisdiction and enforcement issues in the EU "Maintenance Regulation" (Regulation 4/2009).
3. International jurisdiction and problems of application in EU Regulation 650/2012 on matters of succession.
4. International jurisdiction and enforcement issues in EU Regulation 2016/1103 on matrimonial property regimes.
5. International jurisdiction and problems of application in the Spanish Judicial Act (LOPJ).

## PART III - APPLICABLE LAW

### Topic 6: APPLICABLE-LAW TECHNIQUES

1. Methodological plurality and normative diversity: choice-of-law rules and substantive rules in private international law.
2. Choice-of-law rules: concept and structure.
3. Special substantive rules.
4. Overriding mandatory rules.
5. Legal framework for matters of applicable law: European, conventional and state rules. Special reference to EU Regulations (Rome I, II, III).
6. Legislative policy (interests and objectives) in the rules of private international law.

### Topic 7. APPLICATION OF CHOICE-OF-LAW RULES

1. Characterization.
2. Harmonisation.
3. Reference to non-unified legal systems.
4. *Renvoi*
5. Public policy (*Ordre public*)



6. Fraudulent use of the law (*Fraude à la loi*)

## **PART IV – LEGAL PROCEEDINGS WITH A FOREIGN ELEMENT**

### **Topic 8. APPLICATION OF FOREIGN LAW**

1. Status of foreign law, methods for proving foreign law, and consequences of failure to provide evidence.
2. Judicial application of foreign law in Spanish private international law.
3. Extrajudicial application of foreign law in Spanish private international law.

### **Topic 9. PROCEEDINGS WITH A FOREIGN ELEMENT, INTERNATIONAL LEGAL ASSISTANCE AND INTERNATIONAL COOPERATION BETWEEN AUTHORITIES**

1. Law applicable to the process. Evidence.
2. The parties to the proceedings.
3. International judicial assistance: notifications and letters rogatory.

## **PART V – RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS, ACTS AND DOCUMENTS**

### **Topic 10 – RECOGNITION AND ENFORCEMENT I**

1. Introduction
2. Effects of foreign judgments
3. Recognition, exequatur and enforcement

### **Topic 11 – RECOGNITION AND ENFORCEMENT II**

1. Decisions subject to recognition and exequatur.
2. Conditions for recognition and exequatur.
3. Procedure for recognition, exequatur and enforcement.
4. Recognition of arbitral awards, and other decisions, acts and documents.



## BIBLIOGRAPHY AND RESOURCES

### Basic Bibliography

#### TEXT BOOKS (Latest editions)

Bogdan, M., & Pertegás Sender, M. A Concise Introduction to EU Private International Law. Europa Law Publishing. Groeningen.

van Calster, G. European private international law: commercial litigation in the EU. Bloomsbury Publishing. Oxford.

Calvo Caravaca, A. L. y Carrascosa González, J. Derecho internacional privado. Comares. Granada. (Available in the Library).

Calvo Caravaca, A. L., Carrascosa González, J. Castellanos Ruiz, E., Rodríguez Rodrigo, J. Caamiña Domínguez, C.M. Tratado de Derecho internacional privado 3 Tomos. Tirant Lo Blanch. Valencia. (**Online access:** Intranet / Universidad / Biblioteca / Recursos electrónicos / Libros electrónicos / **Biblioteca Digital Tirant**).

Espinar Vicente, J. M. y Paredes Pérez, J. I. Tráfico externo y litigación civil. Dykinson. Madrid. (Available in the Library).

Fernández Rozas, J. C. y Sánchez Lorenzo, S. A. Derecho internacional privado. Civitas. Madrid. (**Online access:** Intranet / Universidad / Biblioteca / Recursos electrónicos / Libros electrónicos / **Thomson Reuters Proview**).

Garcimartín Alferez, F. J. Derecho internacional privado. Civitas. Madrid. (**Online access:** Intranet / Universidad / Biblioteca / Recursos electrónicos / Libros electrónicos / **Thomson Reuters Proview**).

Parra Rodríguez, C. (directora). Derecho internacional privado. Huygens. Barcelona. (Available in the Library).

Virgós Soriano, M. y Garcimartín Alferez, F. J. Derecho procesal civil internacional: litigación internacional. Civitas. Madrid. (Available in the Library).

Basedow, J. Rühl, G., Ferrari, F., De Miguel Asensio, P. (editores). Encyclopedia of Private International Law. Elgar. (**Online access:** Intranet / Universidad / Biblioteca / Recursos electrónicos / Libros electrónicos / **Encyclopedia of Private International Law**).

#### LEGISLATION BOOKS (Latest editions)

Álvarez González, S., Esplugues Mota, C., Rodríguez Mateos, P. y Sánchez Lorenzo, S. Legislación de derecho internacional privado. Comares. (Available in the Library).

Borrás Rodríguez, A. y otros. Legislación básica de Derecho internacional privado. Tecnos. (Available in the Library).

Iriarte Ángel, J. L., Casado Abarquero, M. y Muñoz Fernández, A. Derecho internacional privado. Thomson Reuters Aranzadi. (**Online access:** Intranet / Universidad / Biblioteca / Recursos electrónicos / Libros electrónicos / **Thomson Reuters Proview**).



### TEACHING METHODOLOGY

<b>General methodology</b>	
<b>In-class methodology: Activities</b>	
<p><b>Master classes.</b> The professor develops the subject resorting to a practical and applied approach, and encourages student participation. Whenever necessary, the materials that the student must have read in advance are identified by the professor. Whenever appropriate, at the end of the session, a self-assessment exercise is offered. It is later included in the course's web-page.</p> <p><b>In-class practical problems and exercises.</b> They can be either case studies or legal or jurisprudential texts. The professor explains in the first session the proposed methodology, so that in the following sessions the students can take the lead through group work, individual or group presentations. After dealing with the exercise, a general debate takes place, during which any difficulties raised may be solved, and other relevant aspects may be discussed. Whenever appropriate, at the end of the session, a self-assessment exercise is offered. It is later included in the course's web-page.</p>	<p>CED01</p> <p>CGI05, CED04</p>
<b>Out-of-class methodology: Activities</b>	
<p><b>Self-studying</b> Preparing for master classes with the materials identified by the professor. Self-studying</p> <p><b>Guided work</b> Preparing the case studies and commentaries on a text (legislation or case law) suggested by the professor.</p>	<p>CED01, CED05</p> <p>CGI05, CED04</p>

### SUMMARY OF STUDY HOURS

NUMBER OF CONTACT HOURS		
Master classes	Practical classes	Seminars and workshops
40,00	15,00	5,00
NUMBER OF INDEPENDENT STUDY HOURS		
Preparation and revision of the master classes	Preparation for practical sessions and guided-work	
40,00	50,00	
<b>ECTS CREDITS: 6,0 (150,00 hours)</b>		





## GRADING AND ASSESSMENT CRITERIA

Assessment Activities	Assessment criteria	Weighting
<p>Final exam where the student solves problem questions, comments a text or writes an essay connecting various issues. The use of materials in the exam may or may not be allowed (to be confirmed in class).</p>	<p>These exams allow assessing the development of the student's capacity for analysis and synthesis, since the student must unravel the presence of foreign elements in the text or case, analyse the significance of the academic or jurisprudential position given therein, and synthesize in their commentary the different possible solutions to the issues they have identified. Moreover, the student needs to adopt a critical position on the object of the text.</p> <p>In their commentary, they will show to what extent they are capable of appreciating diversity and multiculturalism, since the written exam will make them face situations connected to other societies and cultures that come into contact with the Spanish legal order, and demand a response from it.</p> <p>This type of assessment technique also allows ascertaining whether the student identifies the foreign elements present in a given situation and is able to offer solutions to issues arising therein. Additionally, this assessment technique also allows ascertaining whether the student is able to address the globalized context that these legal relations take place in. In order for the student to truly demonstrate the development of their abilities, the written assessment is carried out within an appropriate time frame.</p>	<p>70 %</p>



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<p>Practical exercises/case studies (Continuous assessment)</p>	<p><b>Solving small exercises or problem questions in class</b> constitutes a very adequate tool for learning. Written exercises (if any) may be assessed but not necessarily graded for the purposes of the final grade. In-class exercises and problem questions allow the student and the professor to make a realistic scrutiny of the learning process, to rectify or insist on those aspects that entail more difficulties and to foster debates in the group that may enhance the development of a sense of critical judgment. These assessments entail informing the student about their learning process, but <b>only an active participation</b> in all the cases or exercises carried out during the course may be graded.</p> <p>Some of these activities -as indicated in each group- will be graded by the professor, taking into account the evolution of the student from the beginning to the end of the course, their capacity of analysis and synthesis of the contents, and their clarity when presenting and communicating in class. The following aspects will be considered: the structure of their discourse, the clarity of their expression, the use of resources when presenting, their personal reflections and their critical judgment, their synthesis capacity and the conclusions they reach.</p>	<p>30 %</p>
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### GRADING

#### Regular exam

The final exam has a predominantly practical nature. Its aim is to ascertain the student's understanding of theoretical contents, mainly through problem questions, case-law commentaries or the analysis of legal texts. At least a grade of four out of ten in the exam is required for the other evaluation activities to be taken into account in the final grade. In the event that the course is not recognised and validated, students participating in exchange programs will obtain 85% of the grade in the exam and the remaining 15% in the assessment of their guided work. Students in their third call for sitting the exam whom (according to University' regulations in force) are exempted from attending class: written exam (100%).

#### Resit exam session

Written exam (100%). A positive engagement in the course's continuous assessment during the semester, may be factored into the final grade through a potential increase of 5% (maximum) on the final exam's grade.

In compliance with current legislation on personal data protection, we inform you and remind you that you can consult the privacy and data protection aspects [that you have accepted in your registration](#) by entering this website and clicking on "download"

<https://servicios.upcomillas.es/sedelectronica/inicio.aspx?csv=02E4557CAA66F4A81663AD10CED66792>.