

EU Private International Law

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Introductory remarks

What is private international law (or conflict of laws)?

Private international law is the body of law which deals with private law relationships and civil proceedings having a transnational (or foreign or international) element

- **What constitutes a “transnational” element?**
- **What is the object of private international law?**
- **What is the purpose of private international law?**
- **What is the source of private international law?**

Case no. 1

Mr. A, an Italian national, rented from the B Corp. (a company established in the UK but basically operating in Italy), a villa located in Spain for holiday purposes. In Spain, Mr. A entered the sea, dove into the water, and hit his head against a submerged sand bank, sustaining serious spinal injuries. The accident rendered him a tetraplegic.

Mr. A decided to sue the B Corp., based on a theory of a breach of contract, claiming an implied term of lack of hidden dangers and reasonable safety.

The transnational element

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Transnational element: the case has contacts with more than one legal system

- Italy: nationality of the plaintiff / principal place of business of the defendant
 - UK: place of registration of the defendant corporation
 - Spain: Place of execution of the contract / place in which the damage occurred / place where the immovable property is located

The object of private international law

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- **Which jurisdiction is competent to adjudicate the case?**

First issue: scope of «international» jurisdiction

- **Which law will be applicable to it?**

Second issue: choice of law

- **In case of success, will it be possible to enforce the judgment in a different country?**

Third issue: recognition and enforcement of foreign judgments

The purpose(s) of private international law

Formal justice / International harmony

- To identify uniform criteria governing the exercise of jurisdiction
- To ensure that, regardless of the State which exercises jurisdiction, the norms of the same legal system will be applied
- To guarantee the international circulation of judicial decisions

versus

Substantial justice / Internal harmony

- Protection of the the fundamental values of the forum State
- Implementation of the forum States' goals of legal policy
- Protection of human rights

Case no. 2

Mr. A and Ms. B are British nationals, but reside in Bari (Italy). They asked their municipality to register the parental order issued by a UK Court, which declared them to be parent of C, who was conceived of through a surrogate mother. The municipality of Bari refuses to register the order, on the ground that surrogate motherhood is prohibited under Law No. 40/2004.

Is this refusal legitimate?

Competing policy interests at stake

- Formal justice / international harmony
 - To guarantee the international circulation of judicial decisions (*i.e.* the UK parental order)
 - To ensure the application of the same rules
- Substantial justice / internal harmony
 - To protect the fundamental values of the forum State (*i.e.* to preserve the “natural family”)
 - Implementation of the forum States’ goals of legal policy, as expressed by Law No. 40/2004
 - To protect human rights (in particular, the right to family life under Article 8 European Convention on Human Rights of both the surrogate parents and children)
 - In conflict with the first two

The source(s) of private international law

- Private international law vs. Public international law
 - Private international law was traditionally part of domestic law, but..
 - ...the full realization of the goal of the international harmony of solutions requires international cooperation
- International Conventions
 - Uniform Law Conventions (*e.g.* 1980 Vienna Convention on Contracts for the International Sale of Goods)
 - Private international Law Conventions (*e.g.* 1961 The Hague Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors)
- **EU Law**
 - Differences in private law as an obstacle to creation of a common internal market
 - Attempts to elaborate an European Civil Code
 - EU Regulations on Private international law

The “Europeanization” of private international law

- Article 220 of the 1957 Treaty of Rome
 - Uniformation through the negotiation of international agreements
 - 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters
 - 1980 Rome Convention on the Law Applicable to Contractual Obligations
- Article 65 of the EC Treaty (as modified by the 1997 Treaty of Amsterdam, now Article 81 TFEU)
 - Legislative competence of EU institutions in the matter of judicial cooperation in civil matters
 - Regulations Bruxelles I and II, Rome I, II, III and IV
 - The special position of UK, Ireland and Denmark

The residual role of domestic law

- Article 2, Italian Law No. 218/1995 “The provisions of this law shall not affect the application of any international conventions to which Italy is a party”
- The primacy of EU law (Declaration No. 17, annexed to the 2009 Lisbon Treaty)

However, lack of comprehensiveness (see the issue of personal capacity)

Course program

6 April: Introduction to private international law

13 April: Civil jurisdiction: the Brussels I (recast) Regulation

20 April: The choice of law rules

27 April: The application of foreign law

4 May: The law applicable to contractual obligations: the Rome I Regulation

11 May: The EU legal framework on intellectual property law
– Prof. Maria Markova, University of National and World Economy, Sofia (Bulgaria)

18 May: The recognition and enforcement of foreign judgments

25 May: The interplay between private international law and the European Convention on Human Rights